United States Court of Appeals
for the Second Circuit

APPELLEE'S APPENDIX

77-6109 B

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

DOCKET No. 77-6109

UNITED STATES COURT OF APPEALS
FILED
DEC 14 197
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

ANTHONY B. CATALDO and
ADA W. CATALDO,

Appellants,

- against -

DAVID P. LAND,
T. GORMAN REILLY and
ROBERT LEVINE,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF NEW YORK

APPELLEES' APPENDIX

DAVID G. TRAGER,
United States Attorney,
Eastern District of New York.

Volume I

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ANTHONY B. CATALDO and ADA W. CATALDO,

Plaintiffs

vs.

UNITED STATES OF AMERICA

Defendant.

-------------------------------x

:Before:
:HON. RICHARD H. LEVET,
District Judge

69 CIVIL 407

New York, May 10,11,14, 1973

STENOGRAPHER'S MINUTES

Exhibit A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

--------------------------------x

ANTHONY B. CATALDO and ADA W. CATALDO,

Plaintiffs

vs.

UNITED STATES OF AMERICA

Defendant.

--------------------------------x

69 CIVIL 407

Before:

HON. RICHARD H. LEVET,

District Judge.

New York, May 10, 1973;
11 o'clock a.m.

APPEARANCES:

ANTHONY B. CATALDO, ESQ., Pro Se.

WHITNEY NORTH SEYMOUR, JR., ESQ., United States Attorney for the Southern District Of New York, Attorney for defendant;
By T. Gorman Reilly, Esq., and
David P. Land, Esq., Assistant United States Attorneys.

THE CLERK: Anthony B. Cataldo and Ada W. Cataldo, plaintiffs, against United States of America, defendant.

Plaintiff ready to proceed?

THE COURT: Are you ready?

MR. CATALDO: Yes.

MR. REILLY: Defendant is ready to proceed.

THE CLERK: Both sides ready for trial, your Honor.

THE COURT: No opening statements are necessary.

Before any plaintiffs' proof is presented, I would ask Mr.Reilly, for the government, if he can state the concessions which he stipulates to make.

Will you please be seated.

MR. CATALDO: Yes. I just want to hand up a memorandum of law.

THE COURT: It's rather late.

MR. CATALDO: I was going to ask your Honor, please, to let me get outside for a minute. I just got in.

THE COURT: Off the record.

(Discussion off the record.)

THE COURT: Again I repeat: I would like to ask Mr.Reilly to place in evidence a statement as to the items which he concedes. If it can be done with reference to your recently-filed trial memorandum, you may do it by that.

MR. REILLY: Your Honor, in an attempt to narrow the issues, the government has submitted by its trial memorandum a listing of those claimed business deductions which are at this point contested by the government. This appears as the appendix to the defendants' trial memorandum.

THE COURT: Is there anywhere there a statement of the items which you concede?

MR. REILLY: All right, your Honor.

In order to do that we must have reference to the submission made by Mr. Cataldo to your Honor during the course of the pretrial conference.

THE COURT: Have you a copy of that with the marked areas which you concede? Can you supply it later, counselor?

MR. REILLY: Yes, we can supply it later.

THE COURT: All right. I will defer it. The plaintiff has had a copy of this, I take it; is that so?

MR. REILLY: Yes, your Honor, he has since Monday.

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THE COURT: Proceed with your proof, Mr. Cataldo.

MR. CATALDO: Mr. Levine. I call Mr. Levine,, please, sir.

THE COURT: Is he in court?

MR. CATALDO: Yes, sir.

THE COURT: All right.

For the record, I, of course, will have to have a transcript of this trial. Proceed.

MR. CATALDO: I didn't understand what you are asking.

THE COURT: Is your hearing all right, counsellor?

MR. CATALDO: Normally it is. I didn't hear the last part of your statement.

THE COURT: I said that I would have to have a transcript of this trial.

Do you understand me now?

MR. CATALDO: Yes, sir, I heard that, sir.

THE COURT: All right.

I believe you have statements presented to you, typed statements of an indication of what papers I desire after trial.

Do you have those? You act amazed.

MR. CATALDO! I didn't understand your last statement. You said something about papers after trial.

THE COURT: Yes. I think you are a little on the deaf side, counsellor. If it gets much worse, I am going to suspend this trial until you get an ear-phone or something. I am not going to struggle with you.

MR. CATALDO: I'm sorry. I didn't hear what you said. I can't answer it intelligently.

THE COURT: I am afraid we are up against a bar here if you can't hear me. I have almost shouted in the last two or three questions I have asked.

Do you have a statement in typing from me as to the post-trial papers to be filed?

MR. CATALDO: No, sir.

THE COURT: You will get one and soon.

Proceed, if you want to, with this witness, if you are ready. I hope you are ready. You should be.

All right, proceed.

ROBERT LEVINE, called as a witness on behalf of the plaintiffs, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CATALDO:

Q Mr. Levine, with whom are you employed?

A Internal Revenue Service, sir.

Q Where is your office?

A At 120 Church Street.

Q Do you have a title?

A Yes, sir.

Q What is that title?

A Internal revenue agent.

Q What are your duties there?

A The prescribed duties of a field agent in the Internal Revenue Service.

THE COURT: Just generally what they are.

THE WITNESS: Examining tax returns of individuals, corporations, trusts, partnerships, et cetera.

Q Do you recall whether or not heretofore you examined the return for 1963 of the plaintiffs here named? Anthony B. Cataldo and Ada W. Cataldo?

MR. REILLY: Your Honor, I am going to object at this time to this question and apparently any other questions concerning the audit of the Cataldos' returns.

The burden on the plaintiff here is to establish what business deductions or other deductions he claims to get a refund, not to go through --

THE COURT: Sustained.

MR. CATALDO: There is no question --

THE COURT: I sustained the objection. When I rule that finishes it normally unless there's some necessity for argument about it. I see none on that one.

Your burden is to attempt to prove that you don't have to pay.

MR. CATALDO: My question goes only --

THE COURT: I ruled. I am not going to listen to you. If you go on, I am going to consider holding you for contempt. I am not going to allow it. Now you know.

MR. CATALDO: I don't want to argue with your Honor.

THE COURT: Don't then.

MR. CATALDO: The objection has no relevance to the question. The question only asks if he made an audit. He objects to something else and you sustain his objection.

THE COURT: Look, counsellor. You heard me say that I would consider holding you in contempt, and I am going to if you go on in this way. Please don't misunderstand me. I can't conduct a trial if you are an attorney and if you are pro se in the manner in which you have just now attempted to do. Proceed as I instruct you.

Any other questions which may be relevant, ask them.

BY MR. CATALDO:

Q Will you please produce the income tax return of Anthony B. Cataldo and Ada W. Cataldo filed for the year 1963.

MR. REILLY: Your Honor, the government is producing and handing to Mr. Cataldo a true copy of the 1963 return of Anthony and Ada Cataldo.

THE COURT: All right.

2x MR. CATALDO: I would like to say --

THE COURT: Do you want those in evidence?

MR. CATALDO: I want the original in evidence, sir.

THE COURT: Are those originals?

THE WITNESS: The originals are not in my possession at this time, your Honor.

THE COURT: Did you hear him.

Q Are they in the possession of your counsel?

MR. REILLY: The government has the original.

THE COURT: What are these?

MR. REILLY: This is a true copy of the return itself.

THE COURT: There is no necessity for the original. Offer those if you want them.

MR. CATALDO: They say it's true. I haven't had a chance to check it.

THE COURT: You must know your own return and you have had months and months to check it.

MR. CATALDO: I thought I would have the originals and there would be no question about it, Judge.

THE COURT: Refused. The objection is sustained. Take those or not.

Do you want these in evidence, sir?

MR. CATALDO: I am checking against my copy to see if they are correct, sir.

THE COURT: I am not going to give you any time. It will be taken subject to any correction. If you want to offer them now, offer them.

MR. CATALDO: I will offer it that way.

THE COURT: I am not going to let you check things as you go along of that character.

MR. CATALDO: I will offer it subject to correction.

THE COURT: All right. The clerk will mark them in evidence.

x (Plaintiffs' Exhibit 1 received in evidence.)

THE COURT: This is the 1963 return, I take it, Mr. Levine?

THE WITNESS: Yes, sir.

THE COURT: All right, here it is (handing).

Any other questions for this witness?

BY MR. CATALDO:

Q There was a deficiency letter that was issued in this matter; was there not?

THE COURT: That's all set forth in the complaint.

Objection, Mr. Reilly?

Q Will you produce the government's copy of that deficiency return?

MR. REILLY: I have no objection, your Honor. I will produce and hand to Mr. Cataldo a true copy of the deficiency letter of September 22nd, the same letter that was sent to Mr. Cataldo.

MR. CATALDO: I don't like the expositions by counsel. I am entitled to present my case without any comments.

THE COURT: His exposition was absolutely warranted. He has given you a true copy. What more do you want? The rule is that copies may be introduced of official records in that manner generally. Take it or leave it.

MR. CATALDO: I will take it subject to my correcting it later if any --

THE COURT: There will probably be no correction.

Mark it in evidence.

xx (Plaintiffs' Exhibit 2 received in evidence.)

MR. REILLY: Your Honor, we have no objection to it being received. We would like to reserve objection as to how it will be used to prove the case.

THE COURT: I don't know what relevance it has. It proves the government's case rather than the taxpayers', as a matter of fact. The presumption is that these papers, the deficiency, is correct. You know that.

What's next?

MR. CATALDO: I am waiting for the exhibit back.

(Pause.)

BY MR. CATALDO:

Q Mr. Levine, you are familiar with the contents of this deficiency letter, are you not, which is Plaintiffs' Exhibit 2?

A Yes, I am, sir.

Q Was there any complaint made about any unreported income by the taxpayers?

MR. REILLY: Objection.

THE COURT: Sustained. I have to sustain Mr. Reilly's objection. You can't prove it this way.

This case has already been ruled upon by IRS. Your business here, if any, is to prove that it's not right. He isn't going to help you on that. He can't.

MR. CATALDO: Let me explain what I have in mind, if your Honor please.

THE COURT: Very briefly.

MR. CATALDO: And that is I merely want to show that the deficiency has items which are improper. In my attempt to prove the arbitrariness of the deficiency--

THE COURT: I don't know how you are going to do that.

MR. CATALDO: I will do it with this gentleman.

THE COURT: How do you contend they are improper?

MR. CATALDO: Sir?

THE COURT: I guess your hearing isn't as good as you think it is.

How are you going to prove that it's improper from this gentleman?

MR. CATALDO: He's familiarwith it.

THE COURT: Have you ruled that all of these items are proper in substance?

MR. CATALDO: Just a minute. That's only a presumption of law and I'm --

THE COURT: You are not going to interrupt my questions.

MR. CATALDO: I'm sorry. I didn't mean to do that.

THE COURT: That is what you did.

MR. CATALDO: I didn't mean to do that.

THE COURT: Have you already ruled that these matters which you have sustained in the deficiency are proper?

MR. CATALDO: I --

THE COURT: Will you please keep quiet.

MR. CATALDO: I object to the question. It calls for a conclusion. 8

THE COURT: Overruled.

MR. CATALDO: Thank you.

THE WITNESS: Your Honor, --

THE COURT: What was the nature of your deficiency consideration? What did you do?

THE WITNESS: The deficiency was determined by appellate conferee. I had made certain recommendations to him.

THE COURT: The appellate conferee determined to disallow these items; is that correct?

THE WITNESS: Yes, sir.

THE COURT: I don't know how you are going to get any further beyond that.

MR. CATALDO: I'm trying to get the facts across that this gentleman knows for your Honor.

THE COURT: Listen, counsellor, you can't get the necessary relevant facts from him. They are in your control. I have sustained your objection. That is all I am going to say.

Go on to the next question if there's any relevant question you can ask this agent. Go on. I am not going to spend much time on this. You are just barking up the wrong tree.

BY MR. CATALDO:

Q Did you testify in a pretrial deposition in this case, Mr. Levine?

A Yes.

Q Did you?

A Yes, sir.

Q All right.

Did you in that deposition state that --

THE COURT: Refer to the page and the line, please. If you have a copy, let me have one so I can follow this. It may or may not be relevant here on this hearing.

(Pause.)

THE COURT: Go ahead with any relevant questions with this agent. I don't see any that are at all relevant myself.

Do you have a copy of that? I asked you. Do you have a copy of the deposition?

MR. CATALDO: I just have one copy. I think the original is in the file.

THE COURT: Let's see. Do you have a page there that you want to ask him about? If so, state what page it is and what line. These things should have been marked before trial. You shouldn't have to fumble around now to find them.

(Pause.)

THE COURT: A copy is not in the file, I am told.

MR. CATALDO: Your Honor, I have lost my place, what I was going to do. For that reason I am a little slow.

THE COURT: . Did you find it now?

MR. CATALDO: I think I have. I'm sorry. Yes.

THE COURT: What page and line, please?

MR. CATALDO: Page 84, line 10.

BY MR. CATALDO:

Q The question is, "One of these items" -- and that refers to deficiency -- "I think is in the letter" --

THE COURT: Don't lower your voice. You lowered it out of hearing.

Q "Q One of these items I think is in the letter of 7/22, for services claimed" --

THE COURT: Is this something from the deposition that you are reading?

MR. CATALDO: Yes, sir.

THE COURT: Please speak up so your voice can be heard.

MR. CATALDO: Yes, sir. I will repeat.

Q "Q One of these items I think is in the letter of 7/22" -- that should be 9/22 -- "for services claimed $2,699.82; and you disallowed $1,084.57.

"Will you please state the items that make up the $1,084.57?"

THE COURT: Objection, Mr. Reilly?

MR. REILLY: Objection, your Honor.

THE COURT: Sustained. You are not going to proceed that way through a rewarming of his dispositions which have already been told to you. Do you understand me?

MR. CATALDO: I can take the stand and show that the deficiency letter was incorrect. I thought --

THE COURT: If that is so on that item, I shall have to decide against you, if that is what you say.

Q Mr. Levine, --

THE COURT: I don't see any sense in your examining this man. Every question is bound to be objected to, and I think I should --

MR. CATALDO: I --

THE COURT: If you have any sensible question which relates to it, give it. This last one isn't.

Let me make myself perfectly clear. Any question to him is useless because he had already, I assume, at least through the appellate group determined these things on the deficiency; is that correct?

THE WITNESS: Yes, your Honor.

THE COURT: You see, you can't prove the case--

MR. CATALDO: Judge, -- all right.

THE COURT: Any more questions? Withdraw the witness.

MR. CATALDO: I am not going to withdraw the witness.

THE COURT: Ask some questions that are suitable.

MR. CATALDO: I shall.

BY MR. CATALDO:

Q Is there an item of $1,084.57 as disallowed in that deficiency item --

MR. REILLY: Objection.

Q -- in that letter?

THE COURT: Sustained. The deficiency letter speaks for itself.

Q Mr. Levine you went over my books and records; did you not?

A Yes, sir, I did.

Q All right.

Will you please note that the deficiency letter disallows --

THE COURT: Are you asking him to note something?

MR. CATALDO: I beg your pardon?

THE COURT: You said "Please note." What do you mean by that? That is not a question.

MR. CATALDO: Yes, it's a preface to the question.

THE COURT: All right.

Q Please note, Mr. Levine, that there's an item of deficiency of $1,084.57.

Do you find that on page 2 of the deficiency?

A Yes, sir, I do.

Q All right.

Will you please explain or state the items to which that $1,084.57 item applies.

MR. REILLY: Objection, your Honor.

THE COURT: Sustained for the same reason as the prior, previous question.

If you think you are going to do this, you are just being misled.

MR. CATALDO: I am trying --

THE COURT: I don't care what you are trying to do. This is not the way to prove a case of a taxpayer.

MR. CATALDO: I am trying to prove that the deficiency notice is improper and arbitrary because there are items there contained which were not -- which were improper through this witness. He is an agent and he knows. I want --

THE COURT: Listen, that is a question of fact. The Court is compelled to take on a prima facie basis a determination of the revenue officer's.

MR. CATALDO: I --

THE COURT: I am not going to hear any more. I am going to rule now that you may not question him as to any item on the deficiency. That letter, the determination thereon, speaks for itself. If you want to go on with this case, all right. If not, we will stop right here.

BY MR. CATALDO:

Q Doesn't --

THE COURT: You are not going to ask any more questions, as I said, about these deficiencies. If the next question is similar to what you have asked, I shall have to sustain the objection. It's about time that you became a little bit realistic.

MR. CATALDO: Admissions against interest are the best type of evidence, Judge.

THE COURT: There are no admissions against interest as far as I can see. If they are in the deficiency, you can point them out later. You don't have to worry about asking him about it.

MR. CATALDO: He's the man who examined the books and --

THE COURT: I have ruled, counsellor.

MR. CATALDO: I know you have.

May I re-examine my notes now?

THE COURT: You are withdrawing this witness; is that right?

MR. CATALDO: I am going to re-examine my notes to see --

THE COURT: I will take a little recess, but not long.

MR. CATALDO: Thank you.

(Recess.)

THE COURT: Are you ready to go on, Mr. Cataldo?

MR. CATALDO: Yes, sir.

THE COURT: Proceed. What's next? Are you going to take the stand?

MR. CATALDO: Yes, sir.

THE COURT: Are you through with this witness?

MR. CATALDO: You told me to be through.

THE COURT: All right.

MR. CATALDO: I am obeying instructions.

THE COURT: You are withdrawn. You might want to wait around here.

(Witness excused.)

THE COURT: Is he available by telephone?

MR. REILLY: Yes, your Honor.

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THE COURT: All right.

Are you going to take the stand?

MR. CATALDO: Yes, sir,

THE COURT: All right. Come up here. Take the oath.

ANTHONY B. CATALDO, one of the plaintiffs, called as a witness, having been first duly sworn, was examined and testified as [illegible]:

THE COURT: As I have already stated to you, you are to proceed by question and answer.

DIRECT EXAMINATION

BY MR. CATALDO:

Q What is your name?

A Anthony B. Cataldo. Residence, 1 Ascan Avenue, Forest Hills, New York. Business, 111 Broadway, Manhattan.

THE COURT: That's your law office?

THE WITNESS: Yes, sir. That's 111 Broadway. That's my law office. I'm a practicing lawyer.

THE COURT: Wait again. There is no question here.

Q When were you admitted to practice law?

A In 1934.

Q Where?

A In the State of New York.

Q In what courts are you admitted?

THE COURT: You are admitted to the New York Bar. That is enough. Are you admitted to the Federal Bar in this district?

THE WITNESS: Yes, sir, Federal Bar in this district, United States Supreme Court, Circuit Court here and even to the Tax Court.

THE COURT: All right, that is interesting.

Q Did you file an income tax return for the year 1963?

A I did.

Q Did you swear to the truth and relevancy of those items?

A I did.

Q Did there come a time when the department checked on the return?

A Yes, it did.

THE COURT: All right. I am going to have to interrupt because of this criminal case which is a pressing matter. I regret to have to interrupt. It won't take long.

(Recess.)

THE COURT: Are you ready now?

MR. CATALDO: Yes, sir.

THE COURT: What is the next question?

Q Did you attend a conference in respect of your 1963 tax return?

THE COURT: You will have to speak up. Mr. Reilly way down here is entitled to hear every word you are saying. I don't think he did.

MR. CATALDO: I am sorry.

THE COURT: Proceed. State your question again and speak up.

Counsel, will you permit him to become the witness and the questioner from his table?

MR. REILLY: Yes, sir.

THE COURT: Go down there and put your papers down there and speak up.

MR. CATALDO: Yes.

A I attended several conferences.

THE COURT: What difference does it make?

MR. CATALDO: I didn't hear you.

THE COURT: I said what difference does it make? Will you get into something that is vital.

MR. CATALDO: I don't know how much introduction --

THE COURT: You don't need much introduction to know that you have to tell about the facts relating to these claims which you make for deduction in your tax return.

MR. CATALDO: I am coming to that.

THE COURT: It's a long way coming.

May I ask you a question? Would you look at the government's trial memorandum.

MR. CATALDO: I have my case prepared. May I please proceed with my case?

THE COURT: Yes, if you know what you are doing.

What are you going to do? Will you tell me generally what you want to do.

MR. CATALDO: Yes, sir.

THE COURT: Are you going to testify about items, specific items?

MR. CATALDO: Yes, sir, I am.

THE COURT: Go ahead. Take a specific item and tell me what it is.

MR. CATALDO: There are some preliminaries which I think are important.

THE COURT: I don't think so, not that kind. You just tell me about each item and that will cover it.

MR. CATALDO: I attended a conference before Mr. Shulman.

THE COURT: That's irrelevant.

MR. CATALDO: He issued a report.

THE COURT: I am not concerned with any report he issued. That I think is alleged in the pleadings and not denied, is it, Mr. Reilly?

MR. REILLY: I object to the procedure, your Honor. We are getting away from question and answer routine.

THE COURT: You must proceed, nevertheless, with question and answer.

MR. CATALDO: If your Honor please, the point I want to bring out is that Mr. Shulman had before him all of my records, and the records he had before him, and he had them for months--

THE COURT: If I can say something, it's immaterial --

MR. CATALDO: It isn't immaterial.

THE COURT: Wait a minute.

MR. CATALDO: It will come up, sir.

THE COURT: You don't need to go over that in the first place.

In the second place, it indicates that he probably made a very thorough study of this thing. That is presumed to be correct. That is what you are expecting to counteract.

Do you have the memorandum of counsel?

MR. CATALDO: Getting into these items without the preliminaries, Judge, --

THE COURT: I know of no preliminaries that are necessary. I tried to convince you of that.

I am going to rule that at this time. You start in and talk about the first item which is contested and which the government sets forth on page 1, small Roman numeral i.

MR. CATALDO: It won't make sense that way, Judge.

THE COURT: Maybe I can determine what makes sense.

MR. CATALDO: I am trying to get your Honor to understand what happened. This is all. I don't want to waste your time. I don't want to waste my time.

THE COURT: Why don't you follow my suggestion?

MR. CATALDO: Because you get a different slant of the problem that way. I want you to get my slant of the problem.

THE COURT: Wait a minute.

Will you tell me in simple brief language how you propose to proceed with your testimony?

MR. CATALDO: Yes, sir.

THE COURT: What is it?

MR. CATALDO: I want to show that the deficiency judgment was an arbitrary judgment, first of all. That doesn't show by reading the items. I want to show what has happened. Then once I --

THE COURT: What do you mean what has happened?

MR. CATALDO: The deficiency judgment by admission of the government is incorrect in various items. It's incorrect in the item that the deficiency judgment disallowed $800 of charitable expenses. Now they agree to that.

Let me finish, please, my statement.

THE COURT: I hope you will finish.

MR. CATALDO: It was incorrect in that the sum of $1,084.57 was an arbitrary figure done by comparing other figures that had no relevance to the matter, and they do not refer to any particular item of expense. There's an item of $2,285 which appears on page 92 of the deposition of Mr. Levine which is the --

THE COURT: What?

5x MR. CATALDO: When you add $2,285 and $1,085 and the --

THE COURT: All of these statements by you that they are arbitrary are useless unless you explain the facts. Don't you see?

MR. CATALDO: You wouldn't let me.

THE COURT: I am not going to stay here for a month listening to you about that.

MR. CATALDO: I don't want a month. I want five, ten minutes.

THE COURT: You proceed in the manner in which I said. If you want to testify about how these various items are--

MR. CATALDO: And then --

THE COURT: Will you listen to me at least. Go ahead.

I suggest, and I think it's reasonable, to take the contested items. These are the only ones that you are concerned with. On this page I mentioned, which is the section entitled in the government's memorandum, "Items Contested," if you will tell us about each one and why you think they are deductible, we might get somewhere. I don't see any other way to do it. Do you, Mr. Reilly?

MR. CATALDO: I'm sorry.

THE COURT: Will you take up the items.

The West Side Tennis Club, why is that deductible? I will ask a question there to start this little game.

MR. CATALDO: The first item is -- the first item in his memorandum is "Bankers' Club, $75.46."

THE COURT: Wait a minute. I don't see that.

Where is that, Mr. Reilly?

MR. REILLY: It's right at the top of the page, your Honor.

THE COURT: All right. Tell us about that. Why is that deductible?

MR. CATALDO: Because they were -- that was an expense paid for luncheons had with various insurance adjusters, other lawyers or clients.

THE COURT: Claim agents?

MR. CATALDO: I beg your pardon?

THE COURT: Claim agents?

MR. CATALDO: Yes, sir.

THE COURT: Did you have a practice that included a large number of personal injury actions?

MR. CATALDO: No, but I had cargo damage claims.

THE COURT: I see.

Were all of these cargo claims, these persons?

MR. CATALDO: Cargo claims. There were claims on ships, on charters. I handle a lot of ship work, various kinds.

THE COURT: Do you have a list of these persons that you entertained there?

MR. CATALDO: I explained all this to the --

THE COURT: I didn't ask you that.

Do you have a list here?

MR. CATALDO: Of what?

THE COURT: I said of those whom you entertained

MR. CATALDO: I can call them off. Yes, I know where they are. I had a list in my diary.

THE COURT: Is that here?

MR. CATALDO: I don't have the diary here.

THE COURT: Then it's no good here.

MR. CATALDO: I made a list in the diary.

THE COURT: All right. I am not concerned with that at all.

MR. CATALDO: If your Honor please, the law seems to be that in 1963 these didn't -- there didn't have to be any such list for individuals, particularly in these luncheons --

THE COURT: How did you get the $75.46 if you made no list?

MR. CATALDO: Well, I have some checks indicating that expenditure.

THE COURT: Where are the checks?

MR. CATALDO: I'll get them for you.

THE COURT: Counsel, do you want to dispute this item?

MR. REILLY: Yes.

MR. CATALDO: Your Honor gets in the middle of things.

THE COURT: I try to get the facts.

MR. CATALDO: I know. You have got to do it my way.

THE COURT: I don't have to do it your way, counsellor, for your enlightenment now. You have a rather peculiar attitude, counsellor.

MR. CATALDO: No, sir.

THE COURT: All right, you differ with me.

MR. REILLY: Your Honor, we admit that there was actually a $75.46 check paid to the Bankers Club. We do contest that it has been substantiated for business purposes according to the proper regulations.

THE COURT: If that's all you've got, I will decide it now.

MR. CATALDO: You can't decide it now without--

THE COURT: Don't tell me I can't decide it now.

You seem to have the most arrogant attitude towards this Court thay I have had occasion, misfortune, to listen to. If there's any other evidence, I, of course, will take it.

MR. CATALDO: Thank you very much.

THE COURT: I want it now and I don't want it next summer.

MR. CATALDO: All right.

I offer an exhibit --

THE COURT: Let me tell you this. The first thing you do, you have these proposed exhibits marked for identification by the clerk.

MR. CATALDO: Thank you.

THE COURT: Now that you have learned that, follow that method.

MR. REILLY: Your Honor, if Mr. Cataldo is searching for the check --

THE COURT: You concede that the check was paid?

MR. REILLY: Yes.

THE COURT: He doesn't concede the propriety, I take it, of this as a deduction. . Is there a rule about some substantiating features, counsellor?

MR. REILLY: Exactly, your Honor.

THE COURT: That's the point.

Go on with something else and come back to it.

MR. CATALDO: I have a check.

THE COURT: Did you hear what was said about the check? What did I say about the check? You didn't hear me.

MR. CATALDO: I thought you wanted me to submit the check.

THE COURT: I just said to the contrary. I said that Mr. Reilly conceded it. Again it's back to your hearing. I am just about shouting most of the time to you. Then you can't hear me.

MR. CATALDO: All right. That check was paid--

THE COURT: I don't care when it was paid. He is asking for substantiating data.

Do you have some slips of the Club, some luncheon slips?

MR. CATALDO: Yes, sir.

THE COURT: Get them out.

Do you have something or haven't you got it? You should have your exhibits all ready. Maybe that's too much to expect. Don't talk to yourself.

MR. CATALDO: I'm sorry. You have discommbobulated my approach to this thing.

THE COURT: I am trying to get some order.

MR. CATALDO: Instead of order you are getting me in disorder here.

THE COURT: Take your time. I will have another recess. I am not going to do this again for that purpose.

(Recess.)

26x THE COURT: I want to tell you now, Mr. Cataldo, -- do you hear me?

MR. CATALDO: Yes, sir.

THE COURT: -- that this is the way we are going to proceed. I have no other method as I see it. I am going to take each item up. You present your proof. The government may, if it likes, cross-examine you about the item. Then I am going to decide it then and there.

Do you understand me? Do you understand me?

MR. CATALDO: Yes, sir, I understand. I take exception to your ruling.

THE COURT: You can take any exception you want. That is the way I am going to do it.

MR. CATALDO: Yes, sir. And --

THE COURT: Just hold it. If you are not ready now I will adjourn this a little while.

Are you ready with these papers?

MR. CATALDO: I am not ready with the first item.

THE COURT: Do you have the papers ready on that now?

MR. CATALDO: I got papers ready.

THE COURT: On the checks?

MR. CATALDO: I don't find the checks for $73.

THE COURT: All right. We will go on here. Make a note on your papers. We will come back to that item.

I am asking you to follow in order to create some degree of order here the items which the government lists as contested at the end of their brief. Take up the next item. I am going to do it that way. I expect you to follow me.

MR. CATALDO: I am. I am also entitled to make an offer of proof, sir.

THE COURT: You can't offer proof if you don't have the checks.

MR. CATALDO: I am making an offer of proof.

THE COURT: Of what?

MR. CATALDO: On these questions of the Bankers Club and the questions of the other club.

THE COURT: What offer of proof are you making?

MR. CATALDO: I am trying to tell you the factual situation is important. The Bankers Club is a club right down here in the financial district. I use it only when I am accompanied by a customer or somebody qualified, that I would get a deduction for the lunch I paid for at that Club. At no time --

THE COURT: Wait a minute. That is a kind of self-serving statement, when you say you only go there when you can get a deduction. That doesn't prove that you are entitled to the deduction.

MR. CATALDO: I know that.

THE COURT: That is pulling yourself up by your bootstraps.

MR. CATALDO: I know that.

THE COURT: What are you saying it then for? You are a member of the Bar. You come in and make such a statement as that.

MR. CATALDO: A lawyer ought to have a little leeway of expression.

THE COURT: I am not going to give you any more leeway than I think necessary.

MR. CATALDO: I am trying to get the facts to you. You wouldn't let me. Please don't fight with me on the facts. It's important to me.

THE COURT: Strike that.

MR. CATALDO: I am saying that I used the

Bankers Club only for business purposes. I do not use the Bankers Club for personal purposes. You will not find a check in all these checks I have here which will show that there's a single luncheon. There was always at least two or three people.

THE COURT: I haven't seen the checks. You just talk about them.

MR. CATALDO: I offer the checks of all the --

THE COURT: Give them to the clerk and he will mark them for identification.

MR. CATALDO: Thank you.

(Plaintiffs' Exhibit 3 marked for identification.) xx

THE COURT: You say you offer them. Show them to Mr. Reilly.

MR. CATALDO: He has seen them before.

THE COURT: Any objection to their being placed in evidence? He says they are checks of persons he entertained at this club and that they were persons relating to cargo losses.

MR. CATALDO: Not only cargo, but I --

THE COURT: Listen. You keep quiet at this point. I am not going to let you burst in at any time.

There must be some order here. You are in a peculiar position, of course. I can't avoid trying to make order.

MR. REILLY: Your Honor, these checks say nothing more than Mr. A.Cataldo was charged --

THE COURT: Do they show the name?

MR. REILLY: They show no name of any client. They show no business relationship. They just show the date and what was consumed.

THE COURT: All right.

I will take them for such merit as they may have.

MR. CATALDO: They show also --

THE COURT: Listen, counsellor. I have just stated that I admit them. Why don't you keep still. I might change my mind.

(Plaintiffs' Exhibit 3 for identification received in evidence.)

THE COURT: Now I ask you: Do you have any other evidence?

MR. CATALDO: Yes, sir.

THE COURT: What is it?

MR. CATALDO: The deficiency judgment --

THE COURT: About this matter?

MR. CATALDO: Yes, about the Bankers Club.

THE COURT: What is it?

MR. CATALDO: The deficiency judgment allowed the dues that I paid for the Bankers Club.

THE COURT: This isn't dues, is it?

MR. CATALDO: I beg your pardon?

THE COURT: This is not dues, these are --

MR. CATALDO: Entertainment. I am coming to the dues item now.

THE COURT: Come right away.

MR. CATALDO: Mr.Reilly has denied or disallowed the dues where the deficiency judgment shows the deficiency -- there was an allowance for the dues.

THE COURT: Let me ask Mr.Reilly a question.

Are the dues included in this item?

MR. REILLY: Your Honor, the dues are not disallowed. However, Mr. Cataldo, as Ihave explained to him, in his list of expenditures has lumped together a single bill for the dues and entertainment. The item involved by number is item 149, which is a bill for $307.93.

THE COURT: Where is that?

MR. REILLY: It's right at the top of 2-I. It's the second page. It's the very first entry.

THE COURT: So this item, to make it short, does not refer to dues, does it?

MR. CATALDO: I --

THE COURT: I am asking him.

MR. CATALDO: I'm sorry.

THE COURT: You are too much sorry, not enough attention.

MR. CATALDO: That's not the point. I know the facts.

THE COURT: Listen, please keep still at the proper moment so we can get along.

MR. REILLY: The answer is, your Honor, that we concede $281.25 of that amount as dues. We contest the balance of the $307.93 which is, in fact, $26.68 as unsupported entertainment expense.

THE COURT: You contest the $75 on this item?

MR. REILLY: The first item? Yes, we do. That is unsubstantiated entertainment expense.

THE COURT: All right.

Now I ask you finally, Mr. Cataldo, and please don't make a speech, just tell me yes or no, do you have any other evidence about this $75.46 item? Yes or no.

MR. CATALDO: Well, yes, I have.

THE COURT: I am not urging you.

What is the evidence?

MR. CATALDO: It's a notation in a diary of the person whom I entertained on that day.

THE COURT: That is not here?

MR. CATALDO: No.

THE COURT: That's out.

MR. CATALDO: That diary was submitted to the government four times.

THE COURT: But it isn't in court.

MR. CATALDO: Excuse me?

THE COURT: I am going to dispose of this. I am going to disallow it.

We pass on to the Ascan Avenue Association, $178.

What about that?

MR. CATALDO: That's part of the whole deal. I asked for --

THE COURT: Listen, won't you please attempt to aid the Court. You go off on tangents. I suppose it's useless.

I want to know what this Ascan is and why you --

MR. CATALDO: A lawyer is entitled to get a home rent allowance if he uses his home for business. That's home rent. I use my home for business. I pay home rent of $178.41. I paid an office rent of $265 for the whole year. I rented services in addition to that, but since I charged -- since I got no money from the landlord in the office-- since I got nothing from the office in the way of money, I paid him $265.

My total business expense for rent was half of $178.41 per month, plus the $265. They have disallowed the whole thing.

THE COURT: Let me ask you some questions. Please don't interrupt me. Just answer the questions.

Do you rent this apartment?

MR. CATALDO: I rent an apartment; yes, sir.

THE COURT: How much rent do you pay or did you pay at this time, '63?

MR. CATALDO: $178.41.

THE COURT: How many rooms were rented?

MR. CATALDO: Five.

THE COURT: How many were used by you directly --

MR. CATALDO: I used --

THE COURT: Wait a minute.

MR. CATALDO: I --

THE COURT: Wait a minute. I am just at my wit's end with you, sir.

MR. CATALSO: I thought you were finished. I'm sorry.

THE COURT: You are hard of hearing and then you disregard what I have said several times.

How many rooms did you occupy for your office?

MR. CATALDO: I occupied all of them at different times.

THE COURT: Where did you live?

MR. CATALDO: I lived in the same place.

THE COURT: You occupied all of them at different times. I suppose you went to the kitchen, you went to the dining room, you may have gone to the bathroom at times. So you contend what, that's half?

MR. CATALDO: Half because --

THE COURT: You stated it. I will reduce this by one-half again. One-quarter will be the amount, counsellor, allowed.

MR. CATALDO: May I --

THE COURT: You are through on that case.

MR. CATALDO: I want to make an offer of proof, sir.

THE COURT: I don't want any more offers of proof.

MR. CATALDO: I must to protect the record.

THE COURT: You aren't going to do it here.

You are going to finish up on your offer as we go along. I am not going to take this on --

MR. CATALDO: You didn't permit me to talk.

THE COURT: Wait. I am not going to take this on any installment plan which gives you a chance to sputter at the end of my decision after you have presumably submitted all your records, all your proof. That's it. That's all. We are through with that item.

The next thing, Mr. Cataldo, is the West Side Tennis Club, $500. Why should you get deduction on that?

MR. CATALDO: Yes, sir. That's an entertainment in December for sixteen people.

THE COURT: It's what?

MR. CATALDO: Sixteen people. At that time I gave the names to the Internal Revenue of the people who were present.

THE COURT: I am not concerned with that.

MR. CATALDO: And --

THE COURT: Wait a minute. I can't proceed unless I question you apparently. You ramble.

Is this for persons entertained at luncheons there?

MR. CATALDO: No, sir.

THE COURT: Dinners?

MR. CATALDO: No, sir.

THE COURT: What?

MR. CATALDO: This was a single party which I gave in December at the West Side Tennis Club at which I had brought there various people for that particular party.

THE COURT: Do you have any bills to submit?

MR. CATALDO: Yes, sir. There is a bill.

THE COURT: Present it.

MR. REILLY: Your Honor, while he is looking for the bill I did not get a chance to address myself to the Ascan Avenue Association yet.

Our position is that Mr. Cataldo is entitled to no more than 20 per cent. I would like to cross-examine.

THE COURT: I am going to allow 25 per cent and stick to it. Next time please indicate that you want to present some evidence on it.

Do you have some bills for the Tennis Club?

MR. CATALDO: Yes, sir. Here is house charges.

THE COURT: What?

MR. CATALDO: There is a bill that I paid with a $500 check.

THE COURT: Is it all at one time?

Mark it in evidence unless there is an objection.

MR. REILLY: I would like to see it first.

THE COURT:: All right, you can see it.

(Pause.)

MR. REILLY: Your Honor, I object to this check. First of all, it includes winter tennis fees of $15 and tax on the tennis of $3.75. There is a New Year's Eve party, which is nothing than what appears to be Mr. Cataldo's writing. I really don't know. It's completely unidentified.

THE COURT: Let me see it, counselor.

MR. REILLY: It doesn't list any of the parties entertained, who they were, what their business relationship was. I think it's of no probative value at all.

(Plaintiffs' Exhibit 4 marked for identification.)

THE COURT: Whose writing is this in ink on the slip attached to this proposed exhibit?

MR. CATALDO: I don't know, sir.

THE COURT: Is it yours?

MR. CATALDO: No, sir. I believe it's the secretary of the West Side Tennis Club.

THE COURT: Who in general did you invite?

MR. CATALDO: Yes, sir --

THE COURT: Don't turn away and mumble. I can't hear when you look at the back of the room and speak to the back of the room. I want to ask you a question. It's the only way I can get on with this thing in any reasonable way.

Who were the twenty-one persons, generally speaking, that you invited at this time? There's no date here.

MR. CATALDO: They were the neighbors in Forest Hills.

THE COURT: Neighbors?

MR. CATALDO: Neighbors in Forest Hills from whom I was getting business or from whom I had expected to get business.

THE COURT: Were any of them your clients?

MR. CATALDO: Yes, sir.

THE COURT: How many?

MR. CATALDO: There were Mr. and Mrs. Gitlan --

THE COURT: I didn't ask you the names. I asked you how many.

MR. CATALDO: At least four or five were clients.

THE COURT: Who were the others generally, neighbors?

MR. CATALDO: They were people who I expected to get business from like Mrs. Walsh. I did get her estate five years later. If you don't let me explain, Judge, you don't--

THE COURT: I am letting you explain facts. I am not going to let you ramble all over the bush.

MR. CATALDO: They were people from whom I expected to get business.

THE COURT: All right.

MR. CATALDO: And people from whom I was getting business. For that reason I invited them at this party. The $500-check was made out in $500 --

THE COURT: I don't see any check here. Where is the check?

MR. CATALDO: The check is --

THE COURT: Why don't you get these things ready?

MR. CATALDO: If I had consulted -- I'm sorry.

MR. REILLY: I will concede I saw a $500-check. It was paid to the West Side Tennis Club.

THE COURT: All right.

MR. CATALDO: I asked them to withhold --

THE COURT: What's that?

MR. CATALDO: I asked them to take $500 then because I also owed the dues on January 1st.

THE COURT: You paid apparently, if this is correct on this white slip in ink, $467, is that right, for this party?

MR. CATALDO: Yes, sir.

THE COURT: Is that the party amount?

MR. CATALDO: Yes, sir.

THE COURT:. All right, that's that.

MR. CATALDO: Now--

THE COURT: I will take any other proof about this first item. I don't mean what you got at home or in your office.

All right.

MR. CATALDO: The $500-check I'm explaining is for --

THE COURT: You are not explaining a $500-check for a $467-item--

MR. CATALDO: $467 was included in the $500-check. This is all I'm trying to say.

THE COURT: All right. Mr. Reilly conceded that. You don't hear it and you don't get it.

Will you please sit down.

MR. CATALDO: Yes, sir.

THE COURT: Do you want to ask any questions or put in any evidence or anything about this thing, this claim? It's now $467.

MR. REILLY: Yes.

CROSS-EXAMINATION

BY MR. REILLY:

Q Mr. Cataldo, did you make a listing at the time of the New Year's party of the people that came to the party?

A Yes.

Q Do you have that listing with you today?

A Not with me; no, sir.

Q Did you make a listing of the amount paid at that time?

A I don't understand the question.

Q Did your listing of those people that attended the party also include the amount that was paid?

A This was --

THE COURT: Just answer the question.

MR. CATALDO: I don't understand the question.

THE COURT: All right. Reframe your question.

Q Did you make a business record of the clients and potential clients that were entertained?

A Yes, yes.

Q Is that business record in your possession today?

A No, it is not.

Q Where is it?

A The last time I saw my diary was in your office and since --

THE COURT: No. Just answer where it is.

A (Continuing) The diary apparently has been lost. I would like to explain the circumstances of its loss if you don't mind.

Q Before you do that --

A I have looked for it and looked for it. I have not been able to find it. It was -- the last time I saw it was in your office. I brought it back to my own office. I put it in my desk.

THE COURT: Then you can't claim that Mr. Reilly has it.

MR. CATALDO: The party was in 1962 and there was no such rule in 1962.

THE COURT: All right, you have answered.

MR. CATALDO: There was no such rule in 1962 that you were to make notations of these things.

THE COURT: Any other questions, Mr. Reilly?

MR. CATALDO: Or in 1963.

THE COURT: Keep quiet. You have told the answer.

Q Do you have any people who were entertained at that party here to testify?

A No, I didn't bring them here. I don't have to bring them according to the section --

THE COURT: Strike out "I don't have to bring them, I don't have to bring them." You don't have to bring anything if you don't want to help to prove your case.

Q What business was discussed with each one of the persons that you brought to the party?

MR. CATALDO: I object to the question as being irrelevant.

THE COURT: Sustained in that form.

Q Did you discuss any business dealings with any of the persons brought to the party?

THE COURT: At the dinner?

MR. REILLY: At the dinner or before and after the dinner.

MR. CATALDO: I object to the question as being irrelevant.

THE COURT: Overruled.

A Well, there's one man -- I forget his name right now -- who is from the Atlantic Bank, vice-president of the Atlantic Bank. I discussed business generally with him; yes, sir. I'm not in the habit of asking the Gitlans when are they going to die so I can handle the estate. I had written their wills and I expected that I would have-- I would handle the estate. I was showing my appreciation as including them among my friends who I would invite to a party on New Year's Eve.

Q Did you have occasion to see the Gitlans during the rest of the year in your neighborhood?

MR. CATALDO: I object to that as irrelevant and immaterial.

THE COURT: Overruled.

A I see my clients as often as I possibly can see them.

THE COURT: That doesn't answer the question.

Q Do they invite you to their home?

MR. CATALDO: I object to that. That's irrelevant and immaterial.

THE COURT: Overruled.

A Well, whenever they want to see me, they invite me, yes.

Q Do they always talk business when they have you over?

A Yes.

Q What is the business that they normally discuss?

MR. CATALDO: This is irrelevant and immaterial. In 1962, Judge this--

THE COURT: Are you going to answer or are you objecting?

MR. CATALDO: I beg your pardon? You can rule on it. I think it's irrelevant.

THE COURT: I don't. I am overruling this objection. Answer it.

A The answer is that I discussed business all the time whenever I can with my clients.

THE COURT: All right.

MR. REILLY: I have no further questions.

I would like on the basis of that to move to strike this expense.

THE COURT: I am going to disallow this item.

Pass on to the next item, the Con Ed charge, whatever that was, $34.

What is it for?

MR. CATALDO: Con Edison is a charge of the electric light at home. I'm entitled --

THE COURT: No. Tell me what it was for and so forth. Listen, I don't want any argument mixed up with facts. I have enough trouble with the facts.

MR. CATALDO: It's a Con Edison bill for the home. I'm entitled --

THE COURT: Don't tell me what you are entitled to.

What was it for?

MR. CATALDO: It was for the whole apartment. I wanted half of it.

THE COURT: Is this half or is this whole?

MR. CATALDO: I don't know. He doesn't indicate.

THE COURT: Who does know if you don't know?

MR. CATALDO: I had my own listing and that shows it.

THE COURT: What does it show?

MR. REILLY: It shows $34.68, the whole amount. The check shows that the whole amount was $34.68.

MR. CATALDO: I asked for only half of that. If that's the whole amount, I asked for --

THE COURT: I will allow one-quarter.

The next item is an item of gas, $7.80.

MR. CATALDO: That's the same thing. That's the gas bill at home.

THE COURT: All of it?

MR. CATALDO: If I may have my papers --

THE COURT: You have them. I don't have them.

MR. CATALDO: I can tell you in a minute.

THE COURT: Nobody is trying to deprive you of your papers.

MR. CATALDO: That's the whole of it. I asked for half of that.

THE COURT: One-quarter is allowed.

MR. REILLY: Your Honor, I would like to have some questioning on that.

THE COURT: Yes. It's only $7, counsellor. If we fiddle around over a few dollars like this, we are going to be here for a month.

MR. REILLY: It reappears ten or twelve times. I will just have questioning on it one time.

THE COURT: All right.

BY MR. REILLY:

Q Mr. Cataldo, where are the gas appliances in your home located?

A They are all over.

THE COURT: Where are they? Is there one in the kitchen? Is there a gas stove?

THE WITNESS: Yes, we have a stove in the kitchen.

THE COURT: Anywhere else that you have gas in the home?

THE WITNESS: If this is what he is asks, is asking me, the fact is the gas we use is in the kitchen.

THE COURT: Then it's not allowed at all. That's it.

MR. CATALDO: What's that, sir? Judge, you don't let me explain what the item is for and you rule.

THE COURT: Yes, and you don't listen to me and you don't hear me, and I have to go over and over and over these things.

MR.CATALDO: No, you don't have to go over them. I'm trying to follow you. You won't let me.

THE COURT: You are going to follow me. Get that through your head.

MR. CATALDO: I'm trying to.

THE COURT: I don't know now hard you are trying.

MR. CATALDO: I served --

THE COURT: Keep quiet a minute. I want to ask you a question.

You have said that as to this item for gas, and we are down to $7.80 --

MR. CATALDO: I asked for half of that.

THE COURT: How can I allow you half?

Are you through on that subject?

MR. CATALDO: I beg your pardon?

THE COURT: Listen, I can't make you hear me. You better go out and get an earphone.

Is that all you want to say about the gas item?

MR. CATALDO: No, sir.

THE COURT: What is it you want to say?

MR. CATALDO: I'm entitled -- I use my home for business. I have my clients come to my home, but I use also my home for writing briefs. I use my home for writing my complaints. I use my home for writing papers after hours, in the morning, and I use my home for entertaining guests.

THE COURT: Are you through now?

MR. CATALDO: And customers. When I do these things, I frequently use the gas as much as the electricity, as much as all the facilities of my home. I use the living room, I use the spare room, I use the dining room. I use all these rooms in my way of doing my business.

THE COURT: All right. You have gone on far enough with a whole lot of irrelevancies.

The entire item - -

MR. CATALDO: They are part of my claim for rent and expenses of the home.

THE COURT: Will you get through, please.

MR. CATALDO: I'm through now, sir.

THE COURT: All right.

I disallow the entire amount, the big sum of $7.80.

What is this Ascan?

MR. CATALDO: That's another month's rent.

THE COURT: That's the same thing, isn't it?

MR. REILLY: That will reappear, your Honor. Your prior ruling was one-quarter.

THE COURT: One-quarter is it now on this item.

MR. CATALDO: Before you do that may I tell you --

THE COURT: You may not say anything further about that. I have to bear down here.

MR. CATALDO: You don't have to bear if you will let me ---

THE COURT: I will let you say nothing more. It's the same thing as the other one. It's the same.

MR. CATALDO: No, it isn't. You didn't let me explain it the first time. You won't give me a chance to explain it the second time.

THE COURT: Do you know what I am going to do now? I am going to ask you to show cause at this particular time as to why you shouldn't be held in contempt. I am not going to listen to this. Why shouldn't you be?

MR. CATALDO: Because I am trying to tell you this item of $148, rent item --

THE COURT: You have gone all over that.

MR. CATALDO: No.

THE COURT: It's just another month.

MR. CATALDO: Just a minute. You didn't let me explain the use I make of my home, my business, and one more factor, that my business from my home, from my neighbors, was on the increase. In this year the increase was almost equal to the business I was getting from my New York clients and friends. Because of my activity at home, my business was increasing to the point where now, Judge, my present practice, consists almost 90 per cent of business derived from home activities as compared to before 1962 when there was a greater preponderance of New York business over the home business. There's very little home business. My activities were business oriented.

THE COURT: You see, every time you get into a factual answer you make a speech about it. I am going to rule.

Do you understand? First as to the reference to the contempt, I am going to defer ruling on that. If it goes on again, then I shall return. I am going to allow the same amount as before, one-quarter.

Let's go down. It is suggested that we rule on all of them. Does this appear in another spot?

MR. REILLY: Yes, your Honor.

THE COURT: 3/26, the same ruling.

MR. CATALDO: Where, sir?

THE COURT: Follow it down. Do I have to run your hand over it?

MR. CATALDO: No, sir.

THE COURT: The date is 3/26. It's again the same organization, your landlord apparently, $178.41. That is my ruling as before.

On the next one, 4/25, the same amount, the same ruling.

On another one, 4/29, the same amount, the same ruling.

There is another one, 7/31, $178.71, same ruling.

Then there's apparently two months' rent, 7/1, $356, the same proportion.

MR. REILLY: This is the only exception I have with respect to the rent payments. The government contends that this item was even paid. We have not seen the cancelled check. We have no evidence that this was paid.

THE COURT: All right. I pause there. Let's see if there are any more Ascan items.

Are there?

MR. REILLY: Yes, there are, your Honor.

MR. CATALDO: There is a check for that.

MR. REILLY: On 10/5.

THE COURT: 10/5, that's $356. Do you concede the payment?

MR. REILLY: We do, your Honor.

THE COURT: The same ruling of one-quarter.

MR. REILLY: 12/5.

THE COURT: 12/5, one-quarter is allowed.

MR. REILLY: No further Ascan.

THE COURT: There's one you said where there was no check to substantiate it; is that right?

MR. REILLY: That's right.

THE COURT: Which one is that again?

MR. REILLY: July 1. 7/1 on the second page, item 221 on Mr. Cataldo's list.

MR. CATALDO: I'm not --

THE COURT: Wait a minute, will you, please?

MR. CATALDO: Yes, sir.

THE COURT: Here it is. Is it 7/1?

MR. REILLY: Yes, your Honor.

THE COURT: Do you have a check for that?

MR. CATALDO: I paid --

THE COURT: I say have you got a check?

MR. CATALDO: I'm going to look for it.

THE COURT: You delay this case.

MR. CATALDO: They delayed it. Why didn't they tell me before? I don't know about this.

THE COURT: They don't have to tell you anything before.

MR. CATALDO: All right. Don't blame me for the delay, sir.

THE COURT: Keep your arguments to yourself and your complaints to yourself and get out the check.

MR. REILLY: In a letter dated April 3, 1973 we called specific attention to the fact that there was no substantiation for that particular item on July 1st.

MR. CATALDO: My statement under oath is I paid a year's rent at the rate of $178.41 to that landlord for that apartment.

THE COURT: Will you please produce the check and stop talking.

(Pause.)

MR. CATALDO: Here it is, sir.

THE COURT: All right. Give it to the clerk. Mark it for identification and offer it.

(Plaintiffs' Exhibit 5 marked for identification.)

MR. CATALDO: I offer it.

THE COURT: Is there another check, Mr. Reilly, that you want?

MR. REILLY: No, your Honor, that concludes it.

THE COURT: This is for what item again? This is 7/1. I will allow it with the same ratio as before.

MR. REILLY: No objection to receiving that in evidence.

(Plaintiffs' Exhibit 5 for identification received in evidence.)

THE COURT: All right, one-quarter on that one.

Are there several Con Ed items, Mr. Reilly? I will ask you.

MR. REILLY: Yes, your Honor, there are several Con Ed items.

THE COURT: All right. We passed on one. What did I allow?

MR. REILLY: One-quarter, your Honor.

I think we could just state for the record that

Cod Ed items mount to about ten in number allowed in the of one-quarter.

THE COU hat is what I am going to do. e it.

Any oth oklyn Union Gas?

MR. REI here are about eight or nine of e items.

THE COU I will make the same ruling with items of Brookl . They were disallowed complete-

MR. CAT I take exception, if your Honor se.

THE COU et's get some other items here.

Thomas J son Club.

MR. REI hat's a single item, your Honor.

THE COU hat is that, $10?

MR. CAT That's a Democratic Club in t Hills.

THE COU political club?

MR. CAT Yes, sir.

THE COU membership fee?

MR. CAT Yes, sir, for the year, $10.

THE COU How is that deductible? What he facts which warrant deduction? I am asking you.

MR. CATALDO: Those are the only facts I have. I paid it, my dues --

THE COURT: Disallowed then. Disallowed.

MR. CATALDO: If you want the check, I will give you the check.

THE COURT: I don't want the check. All right.

There's 3/7, West Side Tennis Club, $232. What is that for?

MR. CATALDO: Those are for dues, the balance of the dues that I owed after paying them $500 in January. The $500-check was in part payment of dues.

THE COURT: Why should that be deductible?

MR. CATALDO: Because, as I said, I belong to this club and I use this club. I don't play tennis. I use the club only to entertain my customers and friends who are likely to be customers in the neighborhood.

THE COURT: All right, you say that.

Do you have any proof of the dates and the persons entertained?

MR. CATALDO: I have the checks in payment and I got the bills in payment.

THE COURT: I didn't ask you that. Can't you follow my questions? I am endeavoring to help you here.

You don't seem to appreciate it.

Do you have any list of the persons you say you entertained here in court today?

MR. CATALDO: Not in court today; no, sir.

THE COURT: Out, all of it.

The other, is that dues, the $43?

MR. CATALDO: The $43 are entertainment expenses. I have a bill for the house charges which --

THE COURT: Do you have any list of the guests entertained here in court?

MR. CATALDO: I had them at one time. I put--

THE COURT: I don't care about that. I am not pausing.

Do you have any list here today now?

MR. CATALDO: I will take a look.

THE COURT: Thank you.

MR. CATALDO: The fact of the matter is I'm trying to get an excuse from producing the diary, Judge. I'm trying to lay a basis for a decision on that point. If you don't mind, I would like to tell you my story about the diary.

THE COURT: I am not interested in the diary. It's absent. I am not concerned with it. I am going to disallow the $43.51.

What is the Italian American Chamber of Commerce, $100-item?

MR. CATALDO: That's dues for belonging to--

THE COURT: How is that deductible?

MR. CATALDO:: The Italian American Chamber of Commerce is a congregation of importers of foods from Italy and some exporters to Italy. I joined it so that I could be in among these people and try to get business. I have been a member of that organization and I have gotten business from that organization. I have one recently. A shoe manufacturer sent me a collection item of $8,000. I collected from the leather man here on Madison Avenue.

THE COURT: Was he entertained there or something? How did it have anything to do with the Chamber of Commerce?

MR. CATALDO: Yes, sir. This last collection was referred. The man was referred to me by the Italian American Chamber of Commerce. Also Mr. Antolini hired me to render an opinion in respect of a patented item. Also I have written three or four wills for members that I met as a result of my membership in this organization. I wouldn't join the Italian American Chamber of Commerce if it wasn't for business. It's strictly a business proposition.

THE COURT: What do you say, Mr.Reilly?

MR. REILLY: Could I ask one or two questions of Mr.Cataldo?

THE COURT: Yes.

BY MR. REILLY:

Q Does the Italian American Club have facilities for entertainment?

A No.

Q Is it a club --

A This is not the Italian- American Club. It's the Italian American Chamber of Commerce.

Q It's a business organization?

A It's a business purpose thing.

MR. REILY I would move to disallow it in its entirety. It's not a lawyer's professional expense. The theory that Mr. Cataldo proceeds on, any organization he joins, a bridge club or a chamber of commerce or a subway commuters' club is going to give him some business. That is not a proper business deduction.

THE COURT: It is disallowed.

The next item is the Bankers Club.

MR. CATALDO: I take exception to that, sir.

THE COURT: You have exceptions without stating them to everything I rule upon which is contrary to your position.

MR. CATALDO: I can't see how the Italian American Chamber of Commerce can be anything but a business expense.

THE COURT: One more episode like this and you are going to be held in contempt. I am not going to listen to this rear-end fight that you put up after I have determined the matter.

What about the Bankers Club?

MR. CATALDO: I have given -- the checks are in evidence.

THE COURT: Are they here?

MR. CATALDO: They are here; yes, sir.

THE COURT: Get them out.

(Pause.)

THE COURT: We will recess now until two o'clock. Get the checks and get the other things ready so that we could go ahead with the testimony and the proof with some degree of acceleration.

(Luncheon recess to 2 o'clock p.m.)

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gwt

AFTERNOON SESSION - 2 P.M.

ANTHONY B. CATALDO, resumed.

THE COURT: All right. I believe we are down to 3/19, John F. Lennon, $450.

What is that?

MR. CATALDO: Mr. Lennon is a lawyer. He referred a case to me. When I finished it I paid him a fee of $450.

THE COURT: What was the name of the case?

MR. CATALDO: Sullivan Marine against Howard Oil.

THE COURT: What kind of a case was it? Was it a cargo case or admiralty case or what?

MR. CATALDO: Collision case.

THE COURT: That's an admiralty case ordinarily. What was your fee?

MR. CATALDO: Two-thirds more than that.

THE COURT: What's that?

MR. CATALDO: Two-thirds more than that.

THE COURT: It must have been $1350.

MR. CATALDO: My hours--

THE COURT: Never mind your hours.. I am not interested in the hours. Your fee you say was --

MR. CATALDO: Total fee --

THE COURT: Tell me what it is.

MR. CATALDO: 1350.

THE COURT: Very well.

Did he give the case to you?

MR. CATALDO: Yes, sir.

THE COURT: Did he do any work on the case?

MR. CATALDO: No, sir -- well, he referred it..

THE COURT: Referring it isn't doing any work.

MR. CATALDO: He handled some details with the client.

THE COURT: What details did he handle?

MR. CATALDO: Well, whatever -- the communications with the clients were made by him. I handled the litigation.

THE COURT: You never talked to the client?

MR. CATALDO: Yes, I did.

THE COURT: What details did he handle with the client?

MR. CATALDO: He reported every -- every time I reported to him, he reported to the client.

THE COURT: He was kind of a messenger boy?

MR. CATALDO: I object. May I object to your Honor's description?

THE COURT: I am trying to find out what he did. All you are saying is he gave messages to the client in report of what you were doing.

What do you say about this one, Mr. Reilly?

MR. CATALDO: I'm not finished yet.

THE COURT: All right, finish up.

MR. CATALDO: I have a check for $450 to Mr. Lennon's order. Mr. Lennon deposited that check. Also I have a bill from Mr. Lennon. If I could find it, I will give it to you.

THE COURT: That is in the realm of imagination.

MR. CATALDO: It's a normal forwarding fee.

THE COURT: I understand it's a fowarding fee.

MR. CATALDO: All right.

THE COURT: There is a rule that unless the forwarder does some work on the case, he is not entitled to any fee. In other words--

MR. CATALDO: Excuse me. That does not disentitle my deduction. I charged it as a business expense.

THE COURT: It may. I am just raising it. If you will sit down, I will call on Mr. Reilly, assuming you are finished.

Do you want to oppose this, counsellor?

MR. REILLY: Your Honor, we have challenged this deduction because it is our contention that this money came from trust accounts and not from any professional income. This was not a valid business expense. It was merely taking the $450 out of the amount that was received from the case.

THE COURT: Client?

MR. REILLY: Without declaring it as income, just taking that $450 and sending it to Mr. Lennon.

I would like to pursue some questioning on that.

THE COURT: You may question him.

You will answer his questions.

MR. CATALDO: There's no proof of that, sir.

THE COURT: I said you will answer his questions. Don't argue with me.

MR. CATALDO: I object to his statements.

THE COURT: All it is is an argument. You argued. Now he is entitled to get a little argument in once in a while in between things.

BY MR. REILLY:

Q Mr. Cataldo, would you state the name of the case again that this was derived from?

A Well, I see the bill. It's Wilma S. That refers to the Peerless Oil Company. Wilma S. is a tug owned by the Peerless Oil Company.

Q When did you receive the recovery?

A Just some time before March 19, 1963. It was not a recovery. It was a half-damage case. The Wilma S. was held for half damage.

THE COURT: How much was your total fee that was charged?

THE WITNESS: $1,350.

Q Where did you receive the moneys from? Who paid?

A The client.

Q The client paid you a total of how much?

A $1,350.

Q Did you declare that as income?

A Yes, I did.

Q Can you show where you declared that as income by records?

A I don't know whether it can be done that way or not.

THE COURT: I can't hear you.

THE WITNESS: I don't know whether it can be done that way or not. It was declared as income in 1963.

Q Mr. Cataldo, you have stated on your tax return that you received something in excess of $29,000 as professional income; is that correct?

A No, not in excess of $29,000. I don't know what the amount is. It's in the tax return. Here's a copy that's been marked in evidence. $29,750.58 is the total amount I received for professional income.

Q Did you receive moneys in excess of $29,000 during the course of the year?

A $750.58. I just read it off.

Q I wish to repeat. Did you take into your custody moneys other than the $29,700?

A I don't know. I don't know without looking at the record. I don't know what you mean by moneys other than --

Q Did you have so-called trust accounts under your control?

MR. CATALDO: I object to the question as having nothing whatever to do with this matter.

THE COURT: Overruled.

MR. CATALDO: Trust receipts are just--

THE COURT: I said overruled.

MR. CATALDO: You didn't let me finish my objection, sir.

THE COURT: All right.

Trust accounts, unless they are obviously proper trust accounts, may be subject to some tax. I don't know. I am going to allow him to ask you.

(Read the question, Mr. Reporter.

(Question read.)

A No, not specifically.

THE COURT: Did you take in money for clients at any time?

THE WITNESS: Yes, sir.

THE COURT: Did you put them in a trust account?

THE WITNESS: No, sir.

THE COURT: What did you do, put them in your own account?

THE WITNESS: I put them in my own account; yes, sir.

THE COURT: Go ahead. That is the way he did it, contrary to certain principles.

THE WITNESS: I accounted for everything I got.

BY MR. REILLY:

Q How much money did you receive in trust accounts?

A I don't know.

Q Was it about $66,000?

A I don't know, sir.

Q Did you make an accounting of that during the year --

MR. CATALDO: I object to this. I object to this line of questioning. It's outside the scope of the issue.

THE COURT: He may have --

MR. CATALDO: Gross receipts are not income. The only thing that the deficiency --

THE COURT: Will you please stop talking. I may assist you.

I don't know how this is at issue here, frankly, Mr. Reilly.

MR. REILLY: Your Honor, --

THE COURT: Is there any contention made that he hasn't accounted for all his receipts?

MR. REILLY: Our contention is that the Wilma S. case was a trust account, your Honor. Therefore, if he is going to declare money in a trust account rather than his professional receipts, he can't then take a business deduction for it.

MR. CATALDO: That's not what happened.

THE COURT: Will you please keep quiet until I call upon you. Once more let me remind you that this little matter of contempt is going to hang over your head for a while unless you conduct yourself properly.

MR. CATALDO: This gentleman is accusing me, Judge.

THE COURT: What's that?

MR. CATALDO: This gentleman is accusing me of taking money --

THE COURT: I am going to hold you in contempt now unless you have some explanation of it that is worth while. I am going to fine you $50. You keep quiet unless you are called upon. That's it. I will entertain application later to suspend it.

Will you tell me what your theory is.

MR. REILLY: Our theory is that the $1500 received from his client in the Wilma S. case was deposited in his trust receipts, not his professional-income receipts. If they were put in his trust receipts and he took $450 of that and sent it on to Mr. Lennon, he can't claim that as a business deduction.

THE COURT: I don't know why not. The only principle which I know of which might mitigate against it is the usual ethical thing. I believe it's more or less violated by the attorneys who pay forwarders for fees. So if he did pay a forwarder for fees, I don't know whether there's any reason why the IRS shouldn't recognize it.

MR. REILLY: I will try to make it a little more clear, your Honor.

In calculating his $29,700 of income he did not include this $450 as income.

THE COURT: It isn't income; it's something that is paid out.

MR. REILLY: It actually just passed through his hands.

THE COURT: I see.

MR. REILLY: That was directly from the client to the attorney.

THE COURT: In other words,, you claim that it isn't a deduction for the reason that he never put it into his own account?

MR. REILLY: That is correct. It's complicated by the fact that he didn't have separate accounts for trust and income.

THE COURT: I will ask him.

Did you show as one of the bits of income, important bits of income, a figure of $1,350 from this case?

MR. CATALDO: The fees that I collect from a client I reported full.

THE COURT: That is what he says.

MR. REILLY: Your Honor, I would like you to reserve a ruling on this particular item until --

THE COURT: I am not going to reserve on any of these. I am going to be in trouble if I do that. I see no reason why if he shows that it's accounted for in his income, why this $450 shouldn't be allowed.

BY MR. REILLY:

Q Do you have any proof, Mr.Cataldo, that you included this $1,500 receipt as income?

A Yes.

Q During 1963?

A Yes.

THE COURT: What is the proof?

A (Continuing) Your auditors examined my books and they agreed with what I reported as full income here.

Q Do you have a statement of your income for that year?

A Not separately, no.

Q Did you have an accountant tabulate your income for that year?

A Well, I don't know what he did. I made -- I got an accountant for the appellate conferee. What he did, I don't know.

Q Did you have access to the accountant's work papers?

A To his summary report I got.

Q Did you have access to his work papers?

A Not to his work papers, no.

Q Isn't it a fact, Mr. Cataldo, that you took back the accountant's work papers from Robert Levine, the IRS agent, when he was --

MR. CATALDO: I object to this question. It has nothing to do with this litigation.

THE COURT: Sustained.

MR. REILLY: Your Honor, I am trying to demonstraate that Mr. Cataldo has a listing of his income but has not brought it forward. He is leaving us rely on his --

THE COURT: I don't think that he is compelled to go over this phase of it on the question of whether or not he has accounted for all of his income when you haven't registered any question, have you, about it? This is only a derivative situation from the fact that he has deducted this 450.

MR. REILLY: He must demonstrate that this 450 was declared as income in order for him to deduct it.

THE COURT: That is your contention.

MR. REILLY: That is correct. It's his burden to show that, in fact, he declared it as income.

THE COURT: All right. I will reserve decision on this one item. I hope there will be no others.

I will take a memorandum at the end or any proof that Mr. Cataldo may submit.

Next item, please. That is the Marquet Studio, $63.

What is that for?

MR. CATALDO: That's for photographs I had taken.

THE COURT: Of what?

MR. CATALDO: Of a hallway up in 41st Street and Second Avenue.

THE COURT: How is that deductible?

MR. CATALDO: I had a case --

THE COURT: Did you pay out the money?

MR. CATALDO: I beg your pardon? I paid the money. There's a check toMarquet --

THE COURT: Were you reimbursed by the client for it?

MR. CATALDO: No.

THE COURT: How was it that you were paying the client's disbursements then? This was a disbursement in the trial of the case?

MR. CATALDO: This matter has come up before, your Honor.

THE COURT: It hasn't come up before.

MR. CATALDO: I have been in many cases--

THE COURT: Don't tell me about many cases, tell me about this case.

MR. CATALDO: In this case I did not get reimbursed for this $63 except as it is reflected in a gross fee I got myself at the end of that case.

THE COURT: Then it was reflected in the fee.

Do you want to say anything else?

MR. CATALDO: This is what I say: I collected a gross fee. I did not charge separately for the $63.

BY MR. REILLY:

Q Do you have a statement as to your gross fee in that case?

A That was done in 1967 or '68 when that case was concluded. I don't have it among my papers here.

Q Do you have a receipt of the check that you received for that case? Do you have a cancelled --

A I have a cancelled check, yes, for this matter.

THE COURT: You mean for the payment?

MR. REILLY: Strike that.

Q Do you have a copy of the check that you received?

A Oh, no, no. I never make copies of checks I receive as fees, no.

Q Do you have a copy of the statement that you provided your client in this case?

A I don't know whether I have that or not. I may have written her a letter.

Q Do you have a copy of the income tax return that would reflect that you declared this as income at a subsequent time?

A There is such a thing in existence. I didn't bring it here. You didn't subpoena it. This is the first time I hit this problem.

He never suggested the problem before.

THE COURT: What you are doing is just giving us a lot rather specious excuses for failure to produce the evidence which may help you.

MR. CATALDO: No, sir.

THE COURT: You are not then. I am not going to argue with you.

What I said here is that he added this and collected the amount, added it or at least included it in his bill to the client.

MR. REILLY: That is his testimony, your Honor.

THE COURT: And he is calling it an item for the transaction of business. I don't know what the proof is.

MR. REILLY: Your Honor, --

THE COURT: The only proof is what he said, counsellor.

What do you say I should do with this?

MR. REILLY: The government says that it's the normal accounting method for expenses to be paid by the client. If this particular taxpayer takes it upon himself to use a thoroughly unorthodox method of accounting, he must produce at this trial sufficient records to justify each of these expenditures.

THE COURT: All right.

MR. CATALDO: May I respond to --

THE COURT: There is no question to you yet. I am trying to run this performance, so to speak. I am not going to have you attempt to run it. I am going to ask you a question. Don't argue with me about it.

Do you have a receipt for the $63.50?

MR. CATALDO: I have my cancelled check.

THE COURT: Where is it?

MR. CATALDO: Right here, sir.

THE COURT: Get it out.

MR. REILLY: The government does not contest it was paid.

THE COURT: Then I am going to allow it. Allowed.

$2.81, the gas company. Is that for the kitchen range?

MR. CATALDO: Yes, it is.

THE COURT: I have already ruled on it. It's out.

MR. CATALDO: I know you did.

THE COURT: I come again to Ascan. That is the same thing. That's been allowed.

Italian American Chamber of Commerce has been disallowed.

MR. CATALDO: That $12.50 is --

THE COURT: It's disallowed. I am not going back to it.

MR. CATALDO: May I please tell you what it's for?

THE COURT: I am not interested in that at all. It's been disposed of.

MR. CATALDO: It's a luncheon charge that I got there. It's not a dues charge. You disallowed the dues.

THE COURT: I impose this contempt fine of $50. It will be paid by you at the end of this case.

Now, we will go on.

MR. CATALDO: I don't have $50. You might as well know that now. I don't have five cents in the bank. I'm overdrawn at the bank.

THE COURT: At least sit down, will you. There can be some other types of disposition.

4/3, Bankers Club, $136.65.

What is that, Mr. Cataldo?

MR. CATALDO: You have the checks here.

THE COURT: Are they in evidence?

MR. CATALDO: I will give them to you right now.

THE COURT: I can't take it by imagination.

MR. CATALDO: They are in evidence.

THE COURT: That is what I asked you, are they in evidence.

Are they, Mr.Reilly?

MR. REILLY: Yes, they are. There's a collection of checks.

THE COURT: Did I rule on this?

MR. REILLY: You ruled when they were presented last time that they were insufficient to identify --

MR. CATALDO: You did not so rule. You suggested I submit them in evidence. They are in evidence.

THE COURT: Wait a minute. As I recall it,I ruled on the first item, 1/4, Bankers Club, $75. Is this any different?

MR. CATALDO: This is -- how much is this one

THE COURT: If you will look, it's $136.65.

MR. CATALDO: Here it is, Judge.

THE COURT: Do you have any different material than before on the other item of $75.46?

MR. CATALDO: Here it is. I had for this check --

THE COURT: Are those in evidence, sir?

MR. CATALDO: Yes, sir.

THE COURT: Let me see them.

MR. CATALDO: Here's the check that is in evidence on this case.

THE COURT: Is it relating to this item?

MR. CATALDO: Yes, sir.

THE COURT: All right, let's see.

Any names of guests here?

MR. CATALDO: There are none because --

THE COURT: I didn't ask you that.

MR. CATALDO: Yes, there are names. I supplied the names to the government out of my diary. They have a record of it.

THE COURT: You calm down. You are not going to shout.

MR. CATALDO: I am not shouting, sir.

THE COURT: You are just screaming. I have to speak up to have you hear me.

You say there are names of guests here on these checks, as you call them?

MR. CATALDO: On the checks. I don't put the names on the checks.

5x THE COURT: Where are they?

MR. CATALDO: The government was advised what they were at the time that they examined. Mr. Levine in my office, I told him, I told the appellate conferee --

THE COURT: Sit down.

MR. CATALDO: It came out of my diary. My diary is now missing.

I would like to refer to their record to support my claim for deductibility.

THE COURT: Sit down.

Do you have any such records, Mr. Reilly?

MR. REILLY: We have no such records reflecting the names of people --

THE COURT: Would the agent know more?

MR. REILLY: To my knowledge, the agent knows nothing further than that.

THE COURT: Again this item will be disallowed.

MR. CATALDO: I take exception to that, sir.

THE COURT: You don't need to take exception.

Now, again this Atlantic Beach Club. What are the facts?

MR. CATALDO: The facts are I belong to the

Atlantic Beach Club for the purpose of acquiring business. I have made that decision myself many, many times. $195, I got a check for it. I believe there is a bill which is on account of dues that year for that club. I used that club mostly for business. More than 50 per cent of that club is used for business. They have a very nice dining room and I enjoy getting my customers down there. They enjoy my being down there. I have gotten business from the Atlantic Beach Club, other members as well as my clients. . .I have gotten a lot of business from the Atlantic Beach Club. It's a business-oriented situation as far as I am concerned.

THE COURT: All right. Please sit down.

MR. CATALDO: Thank you.

THE COURT: Any questions on this?

MR. REILLY: Yes, your Honor.

BY MR. REILLY:

Q Mr. Cataldo, you have two daughters?

A Yes, I have.

Q In 1963 how old were they?

A I don't remember.

Q How old are they today?

A I will give you their birthdays. You can figure it out. One was born May 3, 1943, the other was born July

27, 1944.

THE COURT: In 1963 they were about nineteen and twenty years old; is that correct?

MR. CATALDO: Something like that, yes, whatever the facts are.

Q Did your two daughters and your wife use the facilities of the Atlantic Beach Club?

A Oh, yes, they used it. They used the facilities. They don't anymore.

THE COURT: In 1963 they used the facilities, is that right?

THE WITNESS: They used it, yes, sir. They used it as our guests, yes.

Q Did they use the swimming facilities at the Atlantic Beach Club?

A They used the whole club for whatever they wanted to do.

Q Did you keep a record for the Atlantic Beach Club as to each use of the facilities during the year 1963?

A Yes, I did.

Q Do you have that record with you today?

A My use of the facilities was to --

THE COURT: No. Have you the records here, he asked you?

THE WITNESS: Yes, sir.

Q Will you present that record of the use of the club for 1963.

A Yes, sir. Now, I had several records, but right now I just have the checks for the Atlantic Beach Club. I have the checks in payment of the checks and bills. I also had a diary. I also told the government --

THE COURT: You have a diary and it's not here. Stop talking about it.

THE WITNESS: I gave the diary to the government, sir.

THE COURT: There is no indication that the government has the diary. Leave out reference to the diary. It's just moonshine.

MR. CATALDO: I want to say about the diary, please. I want to protect the record. The diary apparently was put in my desk and --

THE COURT: You have been all over that. I am not going to listen twice.

MR. CATALDO: I want to finish my statement.

THE COURT: I am not going to listen twice about the diary. Sit down.

MR. CATALDO: Why don't you let me finish?

THE COURT: Get out those papers.

MR. CATALDO: Why don't you let me finish a statement for the record?

THE COURT: Because it's nonsense. That's why.

MR. CATALDO: It isn't nonsense, sir. When I lose a diary by reason of circumstances over which I have no control, it's not nonsense.

THE COURT: Listen, you have said your say about the location of the diary. I have heard Mr. Reilly. I am forced to conclude that they don't have, the government doesn't have, your diary. The fact that it is somewhere or other and you have control over it doesn't mean it's proof here in this case.

MR. CATALDO: I'm trying to say --

THE COURT: You needn't say any more about the diary. I forbid you to do so at this time. Your conduct here is most reprehensible.

MR. CATALDO: I offer these checks of the Atlantic Beach Club.

THE COURT: Have them marked for identification.

(Plaintiffs' Exhibit 6 marked for identification.)

MR. CATALDO: While he's doing that --

THE COURT: While he is doing that nothing is going on.

MR. REILLY: Your Honor, we have no objection to their being received in evidence.

THE COURT: All right. Mark them in evidence.

(Plaintiffs' Exhibit 6 for identification received in evidence.)

x

MR. REILLY: However --

THE COURT: Do you want to say anything else about this item?

MR. REILLY: I would like to question about that, your Honor.

THE COURT: All right, you may question him first.

BY MR. REILLY:

Q Mr. Cataldo, are these the only remaining records that you have concerning the Atlantic Beach Club?

A I think so.

Q During 1967?

A I think so. Let me take a look once more.

THE COURT: We will take all of these items of the Atlantic Beach Club now. 6/5 is a big one, $579.

6/26 is only a $40-item.

7/8 is $10.16.

7/11, $43.

There are some more. We will take all of these in one area now.

Get all of your Beach Club proofs out now, sir.

MR. CATALDO: I have whatever I have here.

THE COURT: You have whatever you have. That is all you are submitting for any of these--

MR. CATALDO: In support of the items --

THE COURT: Will you listen to me.

MR. CATALDO: I am sorry.

THE COURT: I am suggesting and ordering that you get all or any proofs about the Atlantic Beach Club items out no matter where it is on this paper as to the dates, and get it out now.

MR. CATALDO: These are the items in dispute.

THE COURT: Let me ask you a simple question. Do you have any more?

MR. CATALDO: No more.

THE COURT: All right. Look at them all, counsellor. These are not marked, are they?

MR. REILLY: I have got nothing more since the last exhibit.

THE COURT: There were some marked.

MR. REILLY: All these are marked. This is a group of Plaintiffs' Exhibit 6. They consist of six groupings of checks.

THE COURT: But no others?

MR. REILLY: There are no others.

THE COURT: That is what he said.

MR. REILLY: That's right.

THE COURT: These have all been marked in one group?

MR. REILLY: With one number these have all been marked.

THE COURT: What do you say about that? This covers all of the Atlantic Beach Club claims. I assume that you have given any proof that you have, Mr. Cataldo, about these various claims; is that correct?

MR. CATALDO: No, sir.

THE COURT: Let's have it then. What else is there? What other proof is there? Not comments but proof.

MR. CATALDO: I have.

THE COURT: I don't mean somewhere else. I mean here.

MR. CATALDO: I have the checks and I again assert that I told the government at one time who were the parties--

THE COURT: That is not before me. I don't know what you told the government. I am not concerned with it.

MR. CATALDO: In view --

THE COURT: Will you listen to me?

MR. CATALDO: Yes, sir. You interrupted my statement.

THE COURT: Yes, because I had to. You make irrelevant statements.

I am not going into what you mayhave turned over to the government. If the government has any of these so-called checks,Mr. Reilly, I will expect you to get them out.

Do you have any?

MR. REILLY: The government has no checks of the taxpayer's here.

THE COURT: Then, of course, it is up to Mr. Cataldo to produce his proof, and he tells me now, I think, that this is all the proof he has. I haven't heard anything else.

MR. CATALDO: I gave to the government the names--

THE COURT: I am not listening on that. The government denies that it has any of your papers on this. You are to keep quiet on this.

MR. CATALDO: Your Honor, you asked the gentleman if he had checks. He doesn't have any checks. He said he didn't have any checks. That's a negative pregnant. He's got other records. He's trying to get me to pay tax on items which I positively paid for business expenses and you -- I can't get anywhere with it this way.

THE COURT: Because you don't have the proof.

MR. CATALDO: I think that when I have told these people who the people were from a diary which is now missing because I got sick in June -- I moved in June. My office was moved in June. My girl took care of the moving of the office. I found a lot of things missing. As a result of that moving I didn't get back to my office until after--

THE COURT: Will you please stop talking.

MR. CATALDO: You won't let me.

THE COURT: Of course I don't let you. I don't let you any more than I would any other witness give improper and irrelevant testimony.

MR. CATALDO: I don't believe it's improper. I am entitled to have my offer of proof, Judge, for review in the appellate court.

THE COURT: : You don't have irrelevant testimony to review in any appellate courts. You are just plain giving me nonsense.

MR. CATALDO: That's for the appellate court to determine.

THE COURT: Will you sit down and keep quiet for a while until I ask more.

BY MR. REILLY:

Q Showing you Plaintiffs' Exhibit No. 6 for identification -- received in evidence -- I would like to call your attention to this signature, M. Cataldo.

Do you recognize that?

A Yes, I do.

Q Whose signature is that?

A That's my daughter's signature. She signed for 70 cents. I signed for -- there's an item of $43. Here we had somebody down as guests. Quick figuring, I signed for --

THE COURT: Is there a pending question?

MR. REILLY: The question is does he recognize--

MR. CATALDO: I --

THE COURT: Will you be quiet, please. You interrupt your adversary here. He is asking you a question. You interrupt him.

MR. REILLY: The question has been answered, that he recognizes the signature M. Cataldo as his daughter.

Q Does that signature appear elsewhere in the checks that you have reviewed?

A I don't know whether it does or doesn't. I haven't checked it. That's only 70 cents. The bill is

$43.70.

Q Showing you --

A Why don't you tell the Court that fact?

Q Showing you this sample of checks from the Atlantic Beach Club, do any of these checks indicate the name of a business client of yours who was entertained?

A In 1963 it wasn't necessary to do that. I have been trying to tell that.

MR. REILLY: Objection, your Honor.

MR. CATALDO: If I had no obligation to do it and I didn't do it, I'm not to be charged with it. Here's a name, Fitzgerald, on the back of one of these things. Your records will show that I told your man that a Fitzgerald was entertained at that time.

THE COURT: Anything further, counsellor? I am about to rule on this.

MR. CATALDO: Fitzgerald is a client of mine.

THE COURT: Is there any mention of any name there in any of those exhibits?

MR. REILLY: I have found no name on any of these exhibits of any client.

THE COURT: All right. I will rule on it.

MR. CATALDO: Wait a minute. He doesn't know who my clients are, Judge. Let me see them and I'll tell you.

THE COURT: Maybe you do. If you will give a little attention and look at these and name one of the persons who was your client, I will take it.

MR. CATALDO: He hasn't asked me. He just made a statement.

THE COURT: I am asking you. Can't you understand plain English?

BY MR. REILLY:

Q I hand you Exhibit 6.

A This one has Fitzgerald's name on it.

THE COURT: What is the name?

THE WITNESS: Fitzgerald.

MR. REILLY: The name Fitzgerald, your Honor.

THE COURT: Was he a client?

THE WITNESS: Yes, sir.

L& THE COURT: How much is that item?

THE WITNESS: They consulted--

THE COURT: I am speaking to Mr. Reilly.
How much is that item, if it shows?

MR. REILLY: The item is $13.50.

THE COURT: I will allow that.

MR. CATALDO: . Judge, this is impossible.

THE COURT: No, it isn't impossible. I am just fed up entirely with you, sir.

MR. CATALDO: I'm sorry about that.

THE COURT: I'm very sorry. I'm sorrier than you are. If this goes on, I am going to stop and I will dispose of this case.

Bruno & White.

Was he a client or was his firm a client?

MR. CATALDO: Yes, sir.

THE COURY: How much is that item?

MR. REILLY: This item is $12.

THE COURT: I will allow that.

MR. REILLY: Your Honor, I would ask questions on that.

THE COURT: All right. I don't know why we need to go into all this all the way along. It's becoming a little bit tedious.

MR. CATALDO: I say --

THE COURT: Will you please stop. I am waiting for him to question you. There has to be some degree of order here.

What have you found out there, Mr. Cataldo?

MR. CATALDO: There's a check with Bill Claire at the bar for $6.

THE COURT: I will allow that tentatively.

MR. CATALDO: Here's another one for Dr. Carulli and his wife.

THE COURT: How much?

MR. CATALDO: This is $24.

THE COURT: Were they clients?

MR. CATALDO: Yes, sir.

THE COURT: I will allow that tentatively.

BY MR. REILLY:

Q Mr. Cataldo, would you review the final grouping of checks.

THE COURT: Review the remaining group of checks. See if there are any clients there.

MR. CATALDO: Here's where--

THE COURT: What is the name, please?

MR. CATALDO: Everrett.

THE COURT: How much?

MR. CATALDO: This is $76.

THE COURT: What is that for, $76?

MR. CATALDO: The whole family were down.

THE COURT: How many were in his family, fifteen?

MR. CATALDO: Twelve people.

THE COURT: Was he a regular client?

MR. CATALDO: Yes, sir. I got the Stoops estate from Everett. Stoops is a first cousin. I closed his title to a house.

BY MR. REILLY:

Q Mr. Cataldo, with respect to the $66 --

THE COURT: Is it 66?

Q With respect to the $76 on the Everrett matter, the party was for twelve; isn't that correct?

A That's what that says, yes.

THE COURT: An even dozen.

Q That was Mr. Everrett, yourself and ten of his family; is that correct?

A I don't know how many of his family were there. Let me see.

THE COURT: Don't name them. Just figure it up in your mind.

THE WITNESS: There were twelve in the party. I can only remember six of the Everretts there at the time.

Q How old are the Everrett children?

A Today?

Q No, then.

A I don't know then. Approximately -- Catherine was -- is 48 and Mrs. Ware and her husband must be in their early forties or late thirties.

Q What business matter did you discuss with the

Everretts on the occasion of this dinner?

A Since you asked me --

THE COURT: Yes, since he asked you.

MR. CATALDO: I object to the question as being irrelevant entirely.

THE COURT: Overruled.

A He did ask me a question about a tax problem in his estate at that time. I answered the question.

Q Was this before the dinner, after the dinner or during the dinner?

A I don't remember that. It might have been during the course of the dinner.

THE COURT: Was it at the club?

THE WITNESS: I beg your pardon?

THE COURT: Was it at the club that day?

THE WITNESS: Yes, sir. It was during the course of the dinner.

Q Did Mr. Everrett belong to the club?

A No, not at that time.

Q Did you invite him and his family there as your guests?

A That night for dinner, yes. What is the date of that?

Q Did you invite the entire Everrett family and friends for the purpose of this business discussion about the tax matter?

A I invited them because they were clients of mine and I wanted to entertain them.

THE COURT: The question is:: Did you invite them?

THE WITNESS: I invited them because I wanted to entertain my clients.

Q To ingratiate yourself with the client; is that the principal reason?

A I don't know what you mean by ingratiating. Since you have been so acute with your words -- I don't like that terminology. The law says I can entertain clients and prospective clients, and they are clients and prospective clients.

THE COURT: Wait a minute.

You may move to strike out the entire answer.

MR. REILLY; Move to strike.

THE COURT: I grant the motion.

Read the question again.

(Question read.)

MR. CATALDO: I object to the question as calling for a conclusion.

THE COURT: I already overruled it, Mr. Cataldo.

THE WITNESS: I don't know what he means by ingratiating.

MR. REILLY: I will rephrase the question, your Honor.

Q Mr. Cataldo, did you have a specific purpose to discuss specific business with the Everretts in inviting them to dinner on that occasion?

A Yes.

Q What was the specific purpose, the business purpose that you had in mind in inviting the Everretts?

A I was giving them an opportunity to ask me questions about his estate.

Q Was it necessary to invite twelve people in order to conduct this business discussion?

A I thought so.

Q Why was it necessary? Why did you think so?

A Because it's the way things are done when you entertain your clients. You entertain them in the way that they would like to be entertained.

Q Was Mrs. Cataldo there?

A Yes, she was probably there.

Q Did you have discussions with persons other than Mr. Everrett and the party?

MR. CATALDO: I object to the question, sir.

THE COURT: Overruled.

A I probably did.

THE COURT: Are you through? I am going to rule.

MR. REILLY: Yes, your Honor.

We move to strike this particular expense.

THE COURT: This is what I am going to do. I am going to allow for these five items a total of $67.50. As far as the $76 item is concerned, Everrett, I believe, I am going to allow $12. All other Atlantic Beach Club items are disallowed. So you can make that note.

MR. CATALDO: May I be heard on a rule of law on the point? I take exception to that.

THE COURT: Not now. I am through with this.

We go on to West Side Tennis Club again. There was a $500-item in the beginning. What is this $19.75-item about?

MR. CATALDO: I offer this Exhibit No. 4 for identification, which was apparently not marked in evidence. I offer it in evidence. I want to show the bill includes this house charge of $4.78 from the previous month in 1962.

THE COURT: Mr. Reilly, look at this. What is it, a check?

MR. REILLY: This was the initial exhibit he offered. This has been received in evidence. I'm sorry, strike that.

THE COURT: The original item for West Side Tennis Club was $500, I believe.

MR. CATALDO: That was the amount of the check that paid that bill.

THE COURT: I disallowed that.

Is there any more testimony of this item of $19.75?

MR. CATALDO: I want this marked in evidence.

MR. REILLY: It can be received, your Honor.

THE COURT: Let's see what it is after you have marked it.

(Plaintiffs' Exhibit 4 for identification received in evidence.)

THE COURT: Is that all about this $19-item?

MR. CATALDO: I --

THE COURT: Is it all of it or not?

MR. CATALDO: The $19-item is something else besides that.

THE COURT: Why don't you tell me about that instead of throwing this exhibit at me?

MR. CATALDO: I want to make my record clean.

THE COURT: Your record is clean in some respects at least. What is the $19.75 for? That is my question.

MR. CATALDO: $17.95 --

THE COURT: It's $19.75. At least have the amount right.

MR. CATALDO: What date is there?

THE COURT: That date is 4/5. I suppose they are all '63. April 5, 1963, ten years ago.

MR. CATALDO: All I have is an item of -- I paid for a dinner again with customers at the West Side Tennis Club in the month of March.

THE COURT: For whom?

MR. CATALDO: For customers or clients.

THE COURT: Who?

MR. CATALDO: Who?

THE COURT: Yes. Do you know?

MR. CATALDO: Oh, I knew at the time I gave them the information.

THE COURT: Just stop --

MR.CATALDO: Without the diary I can't give you the name.

THE COURT: Stop that kind of talk.

MR. CATALDO: I entertained these people. It's a fact. I can offer secondary proof. You won't let me.

THE COURT: You are through on this item. It's disallowed.

The next item, West Side Tennis Club, 5/9, the same month,, a few days later, $10.52.

What was that for?

MR. CATALDO: I don't know what that was for. I don't have a bill for that.

THE COURT: Disallowed then.

I pass now to 6/7. That is June 7th, $43.60.

MR. CATALDO: That's a combination of a charge of $40.50 for a dinner party I gave during the previous month and something else.

THE COURT: Who was it first at that dinner party, if you know?

MR. CATALDO: The same situation, Judge. I cannot tell unless I look at my statements, the records they made.

THE COURT: The item is disallowed, $43.60.

There's another item, 6/16, $15. What was that? Do you have any more proof than the others?

MR. CATALDO: I don't have that bill here.

THE COURT: All right. Disallowed.

Here's a bigger one, July 10, $216.51.

MR. CATALDO: That's half year dues which was paid in July for that West Side Tennis Club.

THE COURT: Disallowed.

MR. CATALDO: I don't use this tennis club for anything but entertaining clients and neighbors.

THE COURT: I am ruling as I deem proper. I think a lot of this material that you have shoved into this case and attempted to deduct is based upon some assumption that if you join a club, then it's a deductible item simply because once in a while you may entertain a client there. I am sticking to my ruling of --

MR. CATALDO: My testimony --

THE COURT: Will you please keep quiet while I am talking.

MR. CATALDO: You misunderstood.

THE COURT: I didn't misunderstand anything you said.

7/10, the item of $216.51 is disallowed.

Are there any more of those?

MR. CATALDO: I take exception to that.

THE COURT: I told you several times you don't need to.

8/8, $7.60.

Do you have any proof on that?

MR. CATALDO: I don't have that bill, sir.

THE COURT: Disallowed.

MR. REILLY: 9/3.

THE COURT: $10 on 9/3. Wait a minute. 9/3 is $45.23.

Any proof on that?

MR. CATALDO: I don't know how these-- I have two bills.

THE COURT: Do you have any proof?

MR. CATALDO: I have two bills of July.

THE COURT: This is September.

MR. CATALDO: I have two bills in July--

THE COURT: July is no good.. This is September.

MR. CATALDO: I want to state from memory what that is about. I have no check for that. I want to state from memory --

THE COURT: What are you going to remember?

MR. CATALDO: 45.23, that was paid in September. I incurred that item in August, during the month of August, and that was a single dinner party for my neighbors like Mrs. Wagner and Mrs. Gitlan again or maybe Mr. and Mrs. Bill Welsh. I did entertain these people and I did incur the charges. I paid. I have a check. I don't think they will contest that the check was paid. If you want the check, I will get the check for you.

MR. REILLY: We do not require the check. We concede it was paid.

THE COURT: What is your position on this?

19x MR. REILLY: Our position, he has not established at all that this was a business deduction.

THE COURT: Disallowed.

MR. CATALDO: These people --

THE COURT: I said it was disallowed. I am not going to entertain any rear-guard arguments. Will you please sit down and keep quiet.

MR. CATALDO: I object to your Honor making a ruling as soon as this man gets up.

THE COURT: I'm not --

MR. CATALDO: This amounts to $8,000 in aggregate. You are asking me to pay tax on things that I know are positively deductible. I have been a lawyer many, many years.

THE COURT: Yes. If you have had this kind of a thing and gotten away with it, you got away with some things that I think you shouldn't have, if that is what you are telling me.

All right, we will go on.

The next one is West Side again, 10/8, isn't it,

$39.90?

Do you have any proof on that?

MR.CATALDO: It seems to be the same sort of thing, a bill for $39.

THE COURT: Any evidence about whom it was for?

MR. CATALDO: There is no name notated on these bills.

THE COURT: Any more proof on that?

MR. CATALDO: I can rely on my memory.

THE COURT: That is not sufficient under the rules.

MR. CATALDO: In 1963 it was sufficient. You didn't ask for an opening statement, Judge. I'm at a loss to tell you that the theory of my case is that in 1963 I didn't have to maintain this kind of a record.

THE COURT: Is there any proof?

MR. REILLY: There is absolutely no truth to that, your Honor.

THE COURT: I don't believe it. Now we will go on.

MR. CATALDO: I submitted a memorandum of law on the point, sir. I wish you would review the law on the subject.

THE COURT: Maybe I will at the end. I am not going to now.

MR. CATALDO: All right, sir. Thank you very much.

THE COURT: 10/8, that is disallowed.

11/8, $8, any proof more than you have said?

MR. CATALDO: No, sir.

THE COURT: Disallowed. That's it on the West Side Tennis Club.

What is the next one?

MR. REILLY: 4/24, Fordham Law Alumni..

THE COURT: We have 4/24, the Fordham Law Alumni,, quite a sizable item, $482.15.

What is that?

MR. CATALDO: I ran -- that's the cost of a dinner that I ran.

THE COURT: That you paid for?

MR. CATALDO: I paid for it,yes. My check is $482.15.

THE COURT: Do you concede the check, Mr. Reilly?

MR. REILLY: I concede that the check was paid.

THE COURT: What was it for?

MR. CATALDO: It was a class reunion that I invited my class to. They gave me $300 and I declared that as part of the income that I received that year -- I did not, as a matter of fact, in that year. All I asked for, was $182.15. The difference --

THE COURT: I don't understand that. Let me ask you a question or two.

How much was the total charge for the dinner?

MR. CATALDO: The total charge to me was $482.15.

THE COURT: Did you pay that?

MR. CATALDO: Yes, sir, my check.

THE COURT: For $482?

MR. CATALDO: $482.15.

THE COURT: What was the $300 you were talking about?

MR. CATALDO: I collected in advance about $300, but that was insufficient to pay for the whole bill. All I asked for in my deductions was $182.15.

THE COURT: I thought you asked for a $482 deduction?

MR. CATALDO: They got it this way.

THE COURT: Wait a minute. Let me ask Mr. Reilly.

MR. CATALDO: In my --

THE COURT: Will you please keep quiet when I am asking him a question at least.

Did the taxpayer claim 482 or only 182?

MR. REILLY: Your Honor, item 99 sets forth 482.15.

Then in parentheses it says $182.15.

THE COURT: Only 182 was claimed then?

MR. REILLY: Apparently that's the testimony now.

THE COURT: $182.15 is disallowed.

The next item is Maritime Law Association.

Did we do 9.12 on May 7th, [illegible]s Club?

MR. REILLY: We have been through the Bankers Club.

THE COURT: That's what I thought.

MR. CATALDO: I have the checks in here.

THE COURT: How about the Maritime Law Association, $30, what is that for?

MR. CATALDO: That was a check for the tickets for Maritime Law Association dinner.

THE COURT: A dinner?

MR. CATALDO: Yes, sir.

THE COURT: For whom? Who went?

MR. CATALDO: The American --

THE COURT: Who went to the dinner?

MR. CATALDO: I did.

THE COURT: Was this all for you, this $30?

MR. CATALDO: I don't remember that, sir. I don't remember that factor.

THE COURT: It sounds like at least two. I didn't know they were up to $30.

MR. CATALDO: I think it's two.

THE COURT: Who was the other one?

MR. CATALDO: The only man I can remember that I took was Charlie DeMaria.

THE COURT: Who is he?

MR. CATALDO: He's general counsel of French Line or was at that time.

THE COURT: I am inclined to allow this, Mr. Reilly.

Any questions about it? He took somebody, counsel for the French Line.

BY MR. REILLY:

Q Mr. Cataldo, did you keep a record of that expenditure?

A I had the record, yes. I kept a record of it.

Q Do you still have that record?

A I don't know what you mean by that question. I am talking about the diary. I am trying to tell you --

THE COURT: Keep quiet about the diary. It's just too much for me to listen to it.

Q Do you have any other records besides the diary of this expenditure?

THE COURT: I am going to allow this, Mr. Reilly. It's a small item. It's a customer expense in the field, I assume. He has told me about some of his admiralty clients.

We are down to the State Tax Commission. Is there some question about that?

MR. REILLY: The question of whether it was paid.

THE COURT: Any proof of payment, counsellor?

MR. CATALDO: Which one, sir?

THE COURT: 5/22, $25.

MR. CATALDO: Of course it was paid.

THE COURT: What is the proof?

MR. REILLY: The government will concede this one.

THE COURT: This is allowed then.

We will take a short recess, at least for the benefit of the reporter.

(Recess.)

THE COURT: I am going back on Bankers Club, I believe it is, $9.12 on 5/7. We will take all the Bankers Club items together now.

Do you have any evidence on the $9.12, Mr. Cataldo?

MR. CATALDO: Yes, sir.

THE COURT: What is it?

MR. CATALDO: They are in the checks, sir.

THE COURT: Get the checks out.

MR. CATALDO: Here's a check dated --

THE COURT: Offer them in evidence. Have them marked.

(Plaintiffs' Exhibit 7 marked for identification.)

MR. CATALDO: I offer it in evidence.

MR. REILLY: No objection to receiving it in evidence but we move to strike the expense since there's no identification at least on the check as to the name of the business client or what business purpose was discussed.

THE COURT: Any proof on that, Mr.Cataldo? Which persons?

MR. CATALDO: That shows that I entertained somebody at that date.

THE COURT: Is that all it shows?

MR. CATALDO: That's what the check shows.

THE COURT: All right, disallowed.

MR. CATALDO: I would like to argue the law on that subject, sir.

THE COURT: Not now.

MR. CATALDO: I am certain that --

THE COURT: What you are saying you have said before, and I said I would entertain short briefs on it after

I conclude. You threw this brief at me this morning when the case started instead of before trial.

(Plaintiffs' Exhibit 7 for identification received in evidence.)

THE COURT: The next item is on 6/5, Bankers Club. It's listed as $307.93.

MR. CATALDO: Your Honor, --

THE COURT: Will you please keep quiet. The dues were $26.35 and the balance concerned here is $281.55.

I take it you allowed the dues; is that right?

MR. REILLY: The dues constitute the larger amount, your Honor.

THE COURT: How much is dues?

MR. REILLY: The dues is $281.25.

THE COURT: What is the 26 then?

MR. REILLY: $26.68 is unsubstantiated.

The government concedes that the Bankers Club was used primarily for business purposes.

THE COURT: We allow $281.25. Now in dispute is the entertainment, $26.68.

What proof do you have on that?

MR. CATALDO: Here are the checks.

THE COURT: Offer them for identification.

MR. CATALDO: I entertained --

THE COURT: Offer the checks now for identification.

MR. CATALDO: Here they are.

(Plaintiffs' Exhibit 8 marked for identification.)

x

THE COURT: Do you have a list of the persons entertained?

MR. CATALDO: Yes, sir.

THE COURT: Where is the list?

MR. CATALDO: List? I don't understand what you mean by list.

THE COURT: The names, counsellor. You understand me. You are not that unfamiliar with it.

MR. CATALDO: I didn't put the names on the check. The check shows -- I offered in evidence, sir --

THE COURT: Do the checks show the names?

MR. CATALDO: One person on one day --

THE COURT: Are the names on the checks?

MR. CATALDO: I had no names on the checks, sir.

THE COURT: Disallowed.

MR. CATALDO: I wish to have it marked in evidence, please.

THE COURT: Mark them in evidence.

MR. REILLY: No objection.

THE COURT: I disallow the item of $26.68.

(Plaintiffs' Exhibit 8 for identification received in evidence.)

THE COURT: I pass to 7/8, $30.72.

Do you have any proof with respect to names on that one?

MR. CATALDO: What is the date?

THE COURT: 7/8.

MR. CATALDO: Again I entertained somebody on that day.

THE COURT: That's interesting but not sufficient proof.

MR. CATALDO: I paid the luncheon bill for $10.16 at the end of the month.

THE COURT: That's all then? Disallowed.

We go on.

MR. CATALDO: Wait just one second.

THE COURT: I am taking the Bankers Club only, counsellor.

The next item is 8/8, $22.76.

Do you have any proof on that?

MR. CATALDO: I have a check.

THE COURT: $22.76.

MR. CATALDO: What is the date you refer to, sir? I don't know.

THE COURT: It's August 8th.

MR. CATALDO: A check for $22.76.

THE COURT: Do you have any proof of names?

MR. CATALDO: I have proof of payment.

THE COURT: I said proof of names if you don't mind.

MR. CATALDO: No, sir.

THE COURT: All right.

MR. CATALDO: I offer the check for $22.63. That was paid by my check.

THE COURT: All right. No objection, I take it?

MR. REILLY: No objection.

MR. CATALDO: The check is dated August 8, 1963.

THE COURT: $22.76 is disallowed.

(Plaintiffs' Exhibit 9 received in evidence.)

THE COURT: I go down to 9/5, $22.63.

Do you have any proof?

MR. CATALDO: Nothing but the check and the checks. The checks show again entertaining several people on one day.

THE COURT: Are their names on them? I am not asking how many persons were entertained, I am asking if you have the names of the persons who were entertained.

MR. CATALDO: There was an occasion when I had three people.

x THE COURT: You tell me that.

Any names on them. Will you try to answer my question if you can.

MR. CATALDO: No names on the checks. I offer the checks in evidence.

THE COURT: Mark them in evidence and disallow the item.

(Plaintiffs' Exhibit 10 received in evidence.)

THE COURT: $22.63 is disallowed.

One more Bankers Club, 12/9, $24.29.

MR. REILLY: 12/3, your Honor.

THE COURT: Yes, up above, 12/3; $71.72, December 3rd.

MR. CATALDO: I have the checks.

THE COURT: Any names?

MR. CATALDO: No names. I have indicated --

THE COURT: You have indicated what?

MR. CATALDO: I have indicated that there were guests that day.

THE COURT: I suppose there were. The question is who were they?

MR. CATALDO: Two guests one time, two another time.

THE COURT: Count them up and tell me who they were.

MR. CATALDO: Frankly I think --

THE COURT: You don't know?

MR. CATALDO: I don't remember this way.

THE COURT: All right. Disallowed.

MR. CATALDO: I see now that I had one check where Martini & Rossi --

THE COURT: I don't know what you are saying.

MR. CATALDO: I have one guest who works for Martini & Rossi. He's the New York manager for Martini & Rossi, the vermouth people.

THE COURT: Were they your clients?

MR. CATALDO: Yes, sir.

THE COURY: How much was that?

MR. CATALDO: They --

THE COURT: How much was it for this man?

MR. CATALDO: Here is a check. I don't have his name down. I remember from what he drinks that he was the man who was here. My memory is good. My memory is evidence. If you don't want it, you don't have to take it. I remember that this is what this gentleman does.

THE COURT: It's circumstantial evidence at most. What do you say to that?

MR. CATALDO: There's nothing about personal, they are all business.

THE COURT: I didn't ask you that at all. You don't seem to have any record as to who it was.

MR. CATALDO: That's immaterial.

THE COURT: That is what you say. I have to disagree with you, counsellor.

Disallowed. That's $71.72.

There's one more Bankers Club.

MR. CATALDO: There was a $10-charge in here, Christmas contributions for the members of the staff of the Bankers Club.

THE COURT: That is no better than anything else.

MR. CATALDO: That should be in the category of dues.

THE COURT: Do you concede that, counsellor? It's $10.

MR. REILLY: I haven't seen the evidence of it.

THE COURT: Show it. It's a kind of an assessment I assume, member's assessment. It's $10.

MR. REILLY: Conceded.

THE COURT: 10 is conceded.

MR. CATALDO: Don't be so gracious.

I offer these checks into evidence.

THE COURT: All right. Mark them in evidence.

(Plaintiffs' Exhibit 11 received in evidence.)

THE COURT: The amount of $61.72 is disallowed. $10 was allowed.

Have we computed the 12/5, the rent?

MR. REILLY: There's one more Bankers.

THE COURT: There's $24.29.

MR. CATALDO: I have checks here.

THE COURT: Offer the checks and see what they reveal.

MR. CATALDO: These checks indicate that I had guests at the club.

I offer the checks in evidence.

THE COURT: Any proof as to who they were?

MR. CATALDO: No, I don't remember the names of the parties.

THE COURT: Disallowed.

Mark the checks in evidence.

(Plaintiffs' Exhibit 12 received in evidence.)

THE COURT: 24.29 is disallowed.

All right. 6/6, Michael Civetta, $55. What is that?

MR. CATALDO: Michael Civetta is a lawyer. He referred the Triebs matter to me. He could not handle a closing.

THE COURT: What was it, a closing?

MR. CATALDO: A closing.

THE COURT: How much did you charge?

MR. CATALDO: It's two-thirds again --

THE COURT: It's three times this; is that right?

MR. CATALDO: That's right.

THE COURT: Simplify it. All right. That would be $165.

Did you receive $165?

MR. CATALDO: Yes, sir; and I reported that in the income.

THE COURT: Did you pay him money?

MR. CATALDO: I paid him $55.

THE COURT: Where is your check?

MR. CATALDO: Yes, sir. What is the date of that?

THE COURT: That is 6/6.

MR. CATALDO: July.

THE COURT: No, June.

MR. CATALDO: Would you mind telling the Court that I showed you that check one hundred times, please?

THE COURT: One hundred times? Don't say a lot of nonsense.

MR. REILLY: We concede that check.

THE COURT: All right. Conceded.

I will allow it unless there is some question you have. Allowed.

The next is Raines & Gutman, $225.

Is that a fee?

MR. CATALDO: That's a pitiful thing.

THE COURT: I am not passing on the amount of your fees. That is one thing I don't have to pass on, sir.

Did you pay something to somebody else?

MR. CATALDO: I paid a settlement for a client to Raines & Gutman. Raines & Gutman were the attorneys for the plaintiff in that litigation,

THE COURT Who was your client?

MR. CATALDO: Gustavsson. Flaherty v. Gustavsson.

THE COURT: How do you make that a tax deduction?

MR. CATALDO: It wasn't personal. It was a business deduction. Gustavsson was a contractor who didn't have money. I was pressing claims against the government totalling over $100,000. I paid the item to Raines & Gutm[illegible] I will show you my check.

MR. REILLY: The government concedes the check was paid. It doesn't concede this was a valid expense.

THE COURT: You may question him about it. I frankly don't understand what he said.

MR. CATALDO: It's very simple.

22 THE COURT: I am going to let counsel question you. It isn't as simple as you think it is. Sit down and let him question you.

BY MR. REILLY:

Q Mr. Cataldo, is this company named Ove Gustavsson?

A Yes, sir.

Q Is this company connected in any way to the G. O. Contracting Company?

A Yes, allied.

Q Are they run by the same individual?

A Yes, sir.

Q In 1963 did you receive a payment of $16,629.49 in connection with the Ove Gustavsson matter?

A Yes, sir, I did. It was constructively received, but it was not received until '64.

Q When you say "constructively received," you did not include that in your statement of income in the 1963 return; is that correct?

A I included it in the 1964 return.

Q My question is --

THE COURT: You didn't in 1963. That is what he is asking you. Why can't you answer his question?

THE WITNESS: Because he's misleading the Court.

THE COURT: Because what?

MR. CATALDO: He's misleading the Court.

THE COURT: I know of no such instance. You answer his question.

If you want an answer, give the question again.

I will let the reporter read it. You don't need to make any such unfounded statements as you just made.

Read the question.

(Question read.)

A I didn't have to is the answer really.

THE COURT: He says he didn't. That's what he means.

MR. CATALDO: All right. I will cross-examine myself on the point.

THECOURT: You better.

Q Did you transfer $15,000 of that amount to your wife's savings account or bank account in 1963?

A Yes, I did.

Q Then in 1964 did you declare any amount of the $16,629 which you received in connection with the Gustavsson matter as income?

A Yes, I did.

Q How much did you declare as income?

A I don't remember the amount. I don't have my '64 income tax return here.

Q Did you, in fact, declare $13,950 as income in 1964 from that amount?

A It was about $14,000 that I declared as income.

Q What did you do with your remaining $2,500?

A I paid the expenses and certain bills that this man had incurred out of that fund for which that fund was specifically designated.

Q Do you have any documentation of how you paid those bills?

A I told you how I paid it.

Q What did you pay specifically from that $2,500?

A I paid what was necessary to pay out of that fund.

Q What was necessary, Mr. Cataldo? What did you actually pay?

A There were some employees and there was some rental trucks and things of that sort that I had to pay.

Q Were these expenses that were incurred in connection with the Ove Gustafsson account?

MR. CATALDO: I object to any further inquiry on this thing.

THE COURT: Overruled.

MR. CATALDO: I have not had --

THE COURT: Overruled. That's it. I am not going to listen to anything else from you on this matter on objections.

Answer the question.

Read the question, Mr. Reporter.

(Question read.)

A They were not for the Ove Gustavsson account. He kept his own accounts to himself. I had nothing to do with Mr. Gustavsson. I just handled some matters for the two corporations.

Q Were these expenditures incurred in connection with matters involving Ove Gustavsson Company?

A No.

Q Were these your own expenditures?

A I don't know what you mean by that.

Q Were these case expenditures?

A No, no.

Q Will you kindly tell the Court what you used this money to pay for?

A What money are you talking about?

Q The $2,2500.

A I told you. Certain items had to be paid out of that fund. I paid them.

Q What are those items?

A I told you. As near as I can remember, rentals and employees and other expens[illegible] I don't remember the other expense.

Q Do you have any statements of payment for those particular items?

A No, I don't.

THE COURT: What was this $225 you said you paid to Raines & Gutman? What was that for?

THE WITNESS: He didn't have the money.

THE COURT: Who didn't have the money?

THE WITNESS: The G.O. General Contracting Company, who was the defendant in the case, did not have the money to pay the settlement. The case was settled--

THE COURT: You paid this 225 for settlement?

THE WITNESS: I paid the 225 for settlement and just charged G.O. General Contracting Company for it.

THE COURT: In other words, was it a loan or was it something deferred that you were supposed to collect later

THE WITNESS: It was like any other piece of expense that I have in litigation.

THE COURT: I don't see any likeness of it. Do you call it an expense when you pay somebody else's debt?

MR. CATALDO: Yes, sir. For this fellow I called it an expense.

THE COURT: What is the basis of your claim that you should get credit for it for paying the debt of somebody else? You weren't obliged to pay it, were you?

MR. CATALDO: That's not the point, Judge.

THE COURT: I want to ask you, and will you please try to answer me --

THE WITNESS: Yes, sir.

THE COURT: -- were you obliged to pay it?

MR. CATALDO: That's immaterial.

THE COURT: All right, it's immaterial. You don't answer me.

Anything else you want to say about it?

MR. CATALDO: Yes, sir.

THE COURT: What is it you want to say?

MR. CATALDO: The item was paid because I determined that it was a good business risk for myself to pay the item, to keep him out of trouble and out of judgment.

THE COURT: All right.

Are you finished?

MR. CATALDO: I not finished.

THE COURT: Go ahead.

MR. CATALDO: I sued this party later, and in that suit in the Supreme Court, New York County, I recovered a judgment of over 32,$33,000, and among that suit was this $255 for Raines & Gutman listed. Now, I did not get any reimbursement for this $255. It was an ordinary cost of my doing business and I paid Raines & Gutman. If you want to see the check, I will be glad to show you the check.

THE COURT: I don't care to see it. I don't think it's necessary. Disallowed.

Now we come to 6/21, cash, $75.

What was that for? I don't know how you can enter an item of cash and expect it to be deductible. What was it for, if you know?

MR. CATALDO: I don't understand your question.

THE COURT: I don't know how I can make it any clearer.

What was the cash paid for?

MR. CATALDO: What item are you talking about? What date?

THE COURT: June 21, cash, $75.

MR. CATALDO: If they were to get a decision like I just now got and I didn't say a word -- a business expense like this one was disallowed --

THE COURT: Will you sit down, please.

MR. CATALDO: They would be stunned.

THE COURT: Maybe they would.

MR. CATALDO: They should not have laughed.

THE COURT: I didn't hear any laugh.

What is the $75 for, to get down to earth again?

MR. CATALDO: That is the night of the Maritime Law dinner when I went to the Law dinner and I drew $75 to have pocket money to spend at the Law dinner.

THE COURT: Disallowed.

The next item, George DeFoto --

MR. CATALDO: I did spend that money for not only a justice that I found there, but also for other lawyers with whom I was in contact in trying to settle cases. I'll give you an illustration. Particularly that night I went particularly so I could meet Jimmie Freehill with whom I have had -- I had a large cargo claim. I wanted to settle that claim. I entertained Jimmie Freehill purposely. I don't know whether you remember Jimmie Freehill.

THE COURT: Yes, I remember, James Freehill. He is a kind of rosy-complexed fellow, as I recall.

MR. CATALDO: If that isn't a business expense, I don't know what is.

THE COURT: Still I am going to disallow it. I don't think you have prevailed by a fair preponderance of the evidence over the ajudication of the IRS.

The next item is National Surety, 6/26, $867.67.

What was that for?

MR. CATALDO: I paid a judgment. A concern called Brown & Bryan Lumber Company against National Surety Corporation for bonds which had been given by the National Surety Corporation on an appeal pending in this court. You will find --

THE COURT: I am not going to look for it.

MR. CATALDO: All right.

They recovered a judgment against the National Surety Corporation.

THE COURT: How much?

MR. CATALDO: $750 plus interests and costs, a total of about $860-some-odd.

THE COURT: What did you do?

MR. CATALDO: I paid that judgment. I was guarantor of the bond. I paid the judgment.

THE COURT: Any questions, Mr.Reilly?

I take it you are through with your statement. Are you through? Is there anything else you want to add on this item?

MR. CATALDO: Yes. I thought it was a good business idea to guarantee the bond so I could proceed.

THE COURT: Why was it a good business idea?

MR. CATALDO: Because they weren't entitled to that money. I defended the action for the National Surety Corporation. I want to tell you that I was employed by the National Surety Corporation. My earlier years in business was as underwriter for National Surety Corporation. I obtained a position of prominence in the National Surety Corporation. I was obliged to proceed in a gentlemanly fashion, to protect them against loss against these bonds. I did do that. I did defend them. I put in a lot of time and a lot of expense in defending them. I lost the litigation.

THE COURT: By "them" whom do you refer to?

MR. CATALDO: National Surety Corporation.

THE COURT: Are you finished?

MR. CATALDO: I paid this $867 as a business item.

BY MR. REILLY:

Q Mr. Cataldo, do you have any records that would demonstrate that you were not repaid this $867.67 out of the $2,500 which you in 1964 applied from the Ove Gustavsson account?

A Your question mixes the two things. The $2,500 was paid for expenses of G.O. General Contracting. These were bonds for Ove Gustavsson ContractingCompany. There was no record. You are asking me for a negative. There is no record of a negative. There is no evidence that I got any part of that $867.67. There's no evidence. You can't prove it.

THE COURT: Calm down and don't yell.

MR. CATALDO: This is accusative language.

THE COURT: He is not accusing you of anything. He is making an inquiry. He has a right to make an inquiry.

MR. CATALDO: Not that way.

THE COURT: He has a right to cross-examine you. You as a lawyer ought to know that and you ought to submit in a graceful fashion instead of the way you are acting.

Go ahead, Mr. Reilly.

Q What evidence do you have as to how the $2,500 receipts in '64 were applied to expenses other than this charge of $867.67?

A I have those payments. I have those payments, As a matter of fact, you can check the record of the Supreme Court.

THE COURT: He isn't going to check anything. Don't talk like that. That's nonsense. You are the person who is supposed to come here with proof. He doesn't have to run around and produce your proof.

Finish up your statement on facts.

MR. CATALDO: This gentleman is questioning about an item that is not before the Court at all.

TE COURT: Your objection is overruled.

I will let you answer this. Why do you say that this is a deductible item? You say because it's good business or something?

MR. CATALDO: Yes, sir. I had pending for Gustavsson Contracting Company at this time several claims against the government in excess of $100,000. I was trying to collect these claims. I made recoveries of some $32,000 in one of them. I never collected the money because the surety company in that case, the Massachusetts Bonding Company, lached onto it and claimed a priority over my fees, and I litigated that question of whether I was entitled-- I even lost my fee in that case. The United States Court of Claims dismissed my complaint and I couldn't get that money.

I sued in the state court and I couldn't get that money. I went to the Court of Appeals. My complaint was upheld.

THE COURT: All right.

Any questions or any argument?

MR. REILLY: No further questions.

THE COURT: Give me any argument.

MR. REILLY: No further questions on this particular expense.

It is our position --

THE COURT: Tell me why you contend, if you still do so contend, that it's not deductible. I will pass on it right away.

MR. REILLY: Yes. The record demonstrates that Mr. Cataldo received moneys totaling $16,600 in 1963 --

THE COURT: Assume that is so. Why should this be deductible?

MR. REILLY: Because he only accounted --

THE COURT: You didn't hear me. Why should it be deductible? I didn't say why it should be disallowed.

MR. REILLY: Under normal circumstances this might be deductible. He hasn't demonstrated that he wasn't reimbursed for it by G.O. Contracting Company.

THE COURT: I don't understand how it's a business expense. Why is it a business expense?

Disallowed. It's all disallowed. You have an exception.

George DeFoto, 6/28, $135.

What is that?

MR. CATALDO: That's a court's stenographer's charge in a case. I paid the charge. They don't want to allow it.

THE COURT: Who doesn't want to allow it?

MR. CATALDO: The government didn't want to allow it.

THE COURT: I am not asking you that.

MR. CATALDO: I am going to say something else.

THE COURT: Let me ask you questions. I get it better that way. You can add whatever you want to.

Did you charge your client for it?

MR. CATALDO: No, sir.

THE COURT: Why not?

MR. CATALDO: He went out of business.

THE COURT: Will you allow this, counselor?

MR. REILLY: Yes, your Honor.

THE COURT: All right. Allowed.

MR. CATALDO: If your Honor pleases, these two items appeared --

THE COURT: Wait a minute. I am going to follow the items. I am not following you.

George De Foto, that was just done. That was allowed.

The next one down here, J. Brown, I believe, 7/22, $35.

What is that?

MR. CATALDO: He performed some services for us.

THE COURT: What did he do?

MR. CATALDO: I don't --

THE COURT: You don't know?

MR. CATALDO: Not this long ago.

THE COURT: All right. Disallowed.

MR. CATALDO: I got a check paid to him.

THE COURT: That doesn't mean a thing unless we know what it is for, obviously.

MR. CATALDO: It was for some sort of services.

I remembered it at the time. I can't remember it now.

THE COURT: That argument is gone. 35 is disallowed.

Shakespeare Festival, $18.

What is that?

MR. CATALDO: We bought some tickets for the Shakespeare Festival.

THE COURT: Why is that deductible?

MR. CATALDO: They said it was deductible.

THE COURT: That doesn't make it deductible.

MR. CATALDO: That is why Itook the deduction.

THE COURT: Disallowed.

Surrogates' Court, $20.

What is that for?

MR. CATALDO: That is a fee in the Surrogates' Court.

THE COURT: Why didn't the client pay it? Why didn't you charge it to the client?

MR. CATALDO: I did. The whole charge including the disbursements was reported as income in an estate.

THE COURT: I don't know why you did that?

MR. CATALDO: If your Honor please, I have had this question litigated in another year.

THE COURT: That doesn't help you any here.

MR. CATALDO: The Court insisted on doing that very thing.

THE COURT: I don't think any such thing.

MR. CATALDO: I objected to it. The Court was upheld by the Court of Appeals.

THE COURT: Let me question you about this and you can add anything you want to which you think is relevant.

What date was this?

MR. CATALDO: I'll tell you in a minute.

THE COURT: Do you find anything? I can't hear, the reporter can't hear. If you want to say anything, you will have to talk up. Speak up. Any enlightenment?

MR. CATALDO: I'm trying to find my checkbook stub on the point which would explain the item completely.

THE COURT: What Surrogates' Court was it; do you know?

MR. CATALDO: Yes, sir. I paid a check -- maybe the notation is on the check. That's Surrogates' Court--

THE COURT: I will tell you what I am going to do, Mr. Cataldo. I am going to recess at this time. Will you listen to me.

MR. CATALDO: I have it.

THE COURT: I am not going to take it now.

You may sit down, please.

MR. CATALDO: Yes, sir.

THE COURT: I want you to get all papers for the remaining items on this list, Nussbaums, $24.82; cash, $50; cash, another $50; and on the next page, Segno, $43.50; and the last three items there, 10/17, 28 and 30, Men's Club, Italy Chamber of Commerce, Women's Club. You weren't a member there, were you?

MR. CATALDO: My wife was.

THE COURT: I don't know how that is deductible. Then below is Thomassen, cash again, this is $100, and 12/19, Scialo, $20 and cash, $40.

Will you please get those ready for tomorrow morning at 10:15.

Court is adjourned.

(Adjourned to May 11, 1973, at 10:15 a.m.)

ANTHONY B. CATALDO and ADA W.
CATALDA
V.
UNITED STATES OF AMERICA

New York, May 11, 1973;
10:15 o'clock a.m.

Trial resumed.

--

ANTHONY B. CATALDO, resumed.

THE COURT: All right. I think we had not finished proof with 7/3, Surrogates' Court, $20.

Do you have any additional evidence, Mr.Cataldo?

MR. CATALDO: What item is that, sir?

THE COURT: I just stated it to you. You didn't hear me. It's 7/3, July 3rd, Surrogates' Court, $20.

MR. CATALDO: I had that out last night.

THE COURT: You had it out last night. What have you got this morning?

MR. CATALDO: I have the same check.

THE COURT: Do you have anything except the check? Offer the check, if you like.

MR. CATALDO: I shall.

THE COURT: I am trying to help you here. Next time you better bring your secretary along if you have one and have her aid you in producing these papers. I asked you to get counsel but you declined.

MR. CATALDO: I don't have a secretary. Im sorry.

THE COURT: All right. We will have to struggle then.

Do you have the check?

MR. CATALDO: Yes, sir. I offer this check.

THE COURT: Mark it for identification.

(Plaintiffs' Exhibit 13 marked for identification.)

x

THE COURT: Show it to counsel. This may prove the payment. The purpose of it is another thing, of course.

Any objection, Mr. Reilly?

MR. REILLY: No objection to the exhibit.

THE COURT: What is the corresponding date, 7/3? Let me see it.

(Plaintiffs' Exhibit 13 for identification received in evidence.)

THE COURT: Queens County Surrogates' Court, Clerk. There's some kind of an item written on this in the upper lefthand corner. Is that the Surrogates' Court number or something?

MR. CATALDO: Yes, sir. That's the name of the--

THE COURT: Do you know what estate it was? Can you tell us?

MR. CATALDO: Yes, sir. That's the name of the estate in which that fee was incurred.

THE COURT: That is the number, but what is the name? Is there a name here?

MR. CATALDO: DeErb.

THE COURT: Were you reimbursed for this $20?

MR. CATALDO: No, sir.

THE COURT: Why weren't you?

MR. CATALDO: I reported the reimbursed expense as part of the fee.

THE COURT: I don't understand. How did you handle this $20 disbursement?

MR. CATALDO: I paid it out as a disbursement. Then when I sent my bill to the client I got paid for the disbursement. When I reported the amount, I reported the gross check I received to the Internal Revenue.

THE COURT: What was it?

MR. CATALDO: I beg your pardon?

THE COURT: What was the amount of the gross check? Do you have that check here?

MR. CATALDO: No, sir. That's the client's check, that is not my check.

THE COURT: All right.

Do you have any record of the check? No, I suppose not.

Do you have any record from your books as to the amount? I should have asked you that instead of asking you about the check, of course. Do you have any books that show the receipt --

MR. CATALDO: You didn't--

THE COURT: Just answer yes or no, will you, please?

MR. CATALDO: No, I have no books like that.

THE COURT: All right.

Any other proof about this?

MR. CATALDO: I beg your pardon?

THE COURT: I said any other proof from you about this? I apparently have to repeat almost every question I ask you, yet you tell me you are not deaf.

MR. CATALDO: I have --

THE COURT: Any other proof? What is it?

MR. CATALDO: In my check stub on the date issued, what it was for.

THE COURT: Do you have a statement on your check stub as to the purpose of the $20?

MR. CATALDO: Yes, sir. That is the purpose of the $20, a fee.

THE COURT: It wasn't a fee, it was a Surrogates' charge.

MR. CATALDO: That's right.

THE COURT: Let me ask you this: Was it at the time of the filing of the petition for probate? You don't know that, apparently.

MR. CATALDO: I don't keep all these details --

THE COURT: Never mind. Don't give me excuses. Either give the testimony or not.

Is there anything else you want to say?

MR. CATALDO: Yes.

THE COURT: Proof now, facts, not argument. Do you understand?

MR. CATALDO: I don't know what your ideas of facts are.

THE COURT: It isn't argument, counsellor.

MR. CATALDO: I --

THE COURT: What's the use?

MR. CATALDO: I'm sorry, Judge. I think I know what the facts are. I'm trying to give them to you.

THE COURT: I'm asking you this specific question. Please listen.

What other facts do you wish to state?

MR. CATALDO: Yes, sir.

THE COURT: What are they?

MR. CATALDO: There is an entry inmy check stubs of that item showing it was used in the DeErb estate to pay a fee to the Surrogate Court. That was the fee, $20.

THE COURT: Anything else?

MR. CATALDO: I think my problem --

THE COURT: Never mind about your problem. That's your business, not mine.

MR. CATALDO: This is a question as to whether I incurred the fee. I keep my records on the basis of cash basis. My records are such that when I charge-- when I am charged an expense for a client, I note that that's an expense of doing business in that piece of litigation. When I get the full amount, when I get the amount paid from the client, I report the full amount received. If it turns out to be that I do not get paid, then the item has no income related to it, which income could be reported. It's a complete loss to me. That was the category in which that 867.67 was in. This is my ordinary and customary way of doing business and this is an item that I incurred in an estate.

THE COURT: All right.

MR. CATALDO: There is a case --

THE COURT: Never mind cases. Stick to facts. Any further facts?

MR. CATALDO: No, sir.

THE COURT: All right. You may sit down.

MR. CATALDO: Thank you.

I would like to mention one more thing, please.

THE COURT: What is this, argument or facts?

MR. CATALDO: This is the fact that in the year 1966 the government proceeded just on the basis of which I spoke to you. This has been established in one of my matters with the government. Here they are taking the reverse position. I'm fighting hard to --

THE COURT: You are fighting hard. There is no doubt about that.

All right, you are through on that.

Now, questions by Mr. Reilly.

x BY MR. REILLY:

Q Mr. Cataldo, do you recall when the notation on the check was made?

THE COURT: On the $20-check?

MR. REILLY: On the $20-check where it says DeErb Estate.

THE COURT: Here it is.

Q I show you Exhibit 13.

A Yes, that was made at about the same time as the check.

Q It was made at that time?

A Yes.

Q You wrote it on there?

A That's not my handwriting.

Q It's not your handwriting?

A No.

Q Do you know whose handwriting that is?

A No, I do not. What is the date of that check, please?

Q July 3, 1963.

THE COURT: Do you still object, Mr.Reilly?

MR. REILLY: Yes, your Honor, we object.

THE COURT: I am going to allow it. However, I want to say this to you: You got yourself into this boat because you reported income as income when it, in effect, was a repayment of a disbursement. There is no sense in that at all.

MR. CATALDO: I --

THE COURT: I don't want to listen to you about it.

The next item is Nussbaums, 8/5, $24.82.

What is that for?

MR. CATAIDO: This is a check to Nussbaum, liquor dealer downtown, for a package of liquor I had delivered to my office in preparation of a meeting in my office.

THE COURT: Do you usually have liquor at your meetings in the office?

MR. CATALDO: I generally have liquor in my office.

THE COURT: I see.

MR. CATALDO: To serve to clients.

THE COURT:: Where was this liquor served, if you can recall?

MR. CATALDO: A good deal of it was consumed the same night when it was delivered.

THE COURT: Is there a check on it?

MR. CATALDO: I beg your pardon?

THE COURT: Is there a check on it? You see, I have to repeat aomost every question to you. It becomes irksome. I have due respect for your age and for your experience at the Bar. I regret that I have to do these things. It's become almost impossible to proceed here.

Do you have the check? Are you offering this check?

MR. CATALDO: Yes, sir.

THE COURT: Show it to counsel.

(Plaintiffs' Exhibit 14 marked for identification.)

THE COURT: Any further testimony about it? Any further testimony about it?

MR. CATALDO: I don't want to foreclose myself. This is a check for liquor that I dispensed at my office and the balance of the liquor that was left over was used subsequently in my office. I retained it in my office for further use. This is the only time in my experience of acting as a lawyer have I asked for any liquor to be charged --

THE COURT: That is immaterial. I have to decide these cases de novo. I am going to do it that way.

Do you want to ask any questions, Mr.Reilly, about thisliquor?

BY MR. REILLY:

Q Mr. Cataldo, how much liquor was involved?

A $24 worth.

THE COURT: No. How much in amount of the liquor, not tne charge?

THE WITNESS:.There was a bottle of Scotch and a bottle of rye. I think there was two bottles of Scotch and one bottle of rye. There may have been a bottle of gin, too.

Q Do you have a record of the client who was entertained in connection with this liquor?

A That night, yes. I can give you the names of the people that night.

Q The question is: Do you have a record of the people that were entertained that evening?

A It was liquor generally for the office.

THE COURT: You don't have the names. Why don't you say so?

MR. CATALDO: No, but I can state the names from memory. I know who was there. I know my friends and who I invited on that occasion.

THE COURT: Stop shouting. I'm not deaf.

MR. CATALDO: I'm not shouting for that reason, sir.

THE COURT: You are just shouting because you are excited and you are emotional by this particularly when you have to try your own case.

Have you here now any names of those who consumed this liquor? That is a fair question. Did you hear me?

MR. CATALDO: I don't think it's a fair question at all.

THE COURT: All right. Overruled then.

MR. CATALDO: The question is --

THE COURT: Listen, don't tell me what the question is.

MR. CATALDO: It's immaterial.

THE COURT: You are going on much the same way you did frequently yesterday. I am not going to proceed in that manner. I warned you yesterday.

All right, no answer.

MR. CATALDO: I know the people.

THE COURT: Tell us.

MR. CATALDO: There's Charlie DeMaria, Walker Hayes, Henry Magenheimer and Tom Livingston.

BY MR. REILLY:

Q What business purpose did you have in entertaining that evening?

A Charlie DeMaria --

THE COURT: Listen, you don't have to shout.

MR. CATALDO: All right.

A (Continuing) Charlie DeMaria is general counsel of French Line. Henry Magenheimer was head of the loss department at A I U. That's American International

Underwriters. Walker Hayes was head of the adjusting department at -- Hayes was with Johnson & Higgins. Livingston was with Frank B. Hall.

Q What was the purpose of the meeting, Mr. Cataldo?

THE COURT: Were they all there at the same time?

MR. CATALDO: Yes, sir.

A The purpose of the meeting -- we met at the office. We met at the office, but the reason that they were -- that I was meeting them was that we were going out and they were -- I was getting business from Henry Magenheimer and from Frank B. Hall & Company. I expected to get some business from Johnson & Higgins and from Charlie DeMaria. I never got any business from either Johnson & Higgins or Charlie DeMaria. It was mostly good will.

THE COURT: Are you through now?

MR. CATALDO: Yes, sir.

27x Q Do you have a receipt from Nussbaums Liquor Store?

A I just have the check. I didn't retain the receipt.

MR. REILLY: No further questions.

THE COURT: What do you say to this one, Mr.

Reilly?

MR. REILLY: Your Honor, this is not a valid business expense. This is an entertainment deduction obviously. It's done for good will, as we have heard, no particular business purpose. We don't have any substantiation. We just now have the recollection of the witness as to who attends. We don't have these witnesses here before us.

MR. CATALDO: May I answer that, please?

THE COURT: Briefly, very briefly. This is a matter of argument, that is all, not facts.

MR. CATALDO: He argues that this is my present recollection. I stated these facts to the department a long time ago.

THE COURT: That is immaterial, counsellor. You stated a lot of facts.

MR. CATALDO: I --

THE COURT: Wait a minute. I am not allowing those, the mere fact that you stated facts.

Are you through?

MR. CATALDO: Yes, on the factual situation.

THE COURT: I disallow it. There is no proof here that it was in the interest of business or a suitable or appropriate expense. It is disallowed.

I come next to cash, 8/12, $50.

What was that?

MR. CATALDO: That is not 8/12. It should be 10/12, sir, or 9/12. Just a minute. That was a mistake.

THE COURT: It says 8/12 on this memorandum of counsel.

Produce whatever proof you have with respect to date and we will switch the date. That is all that is necessary.

Do you have any check to cash?

MR. CATALDO: Yes, sir. It was October 12th. Here it is.

THE COURT: Submit it. Have it marked for identification.

(Plaintiffs' Exhibit 15 marked for identification.)

THE COURT: Do you offer that in evidence?

MR. CATALDO: Yes, sir.

MR. REILLY: May I have voir dire on this, your Honor?

THE COURT: Yes.

BY MR. REILLY:

Q Mr. Cataldo, are you familiar with the Budde French Cleaners?

A That's why I pulled it out.

Q Is the check written in ink?

A The check is written in ink.

THE COURT: I will sustain the objection at the present time.

I will listen to any testimony he has about what this check was. Give facts.

MR. CATALDO: Yes, sir.

THE COURT: Not argument.

MR. CATALDO: The gentleman misstates the facts.

We cashed that check with Budde's because I didn't have much time --

THE COURT: Did you --

MR. CATALDO: We --

THE COURT: Wait a minute. Are you through?

MR. CATALDO: No, sir.

THE COURT: Continue.

MR. CATALDO: We received $50 in cash from Budde so that this check was -- these proceeds were to be used orginally for the dinner that would follow this.

THE COURT: That is interesting but it is immaterial.

MR. CATALDO: Instead of that I preserved the cash because the following day, the day after that, I went to Washington on a matter and I used the $50 for the Washington trip. Now, there is a check here to Southgate, which indicated that I stayed over in Washington at the Southgate Motel and I used the $50 on that trip to Washington instead.

THE COURT: There is no claim here, Mr.Cataldo, for any disbursements for any Washington trip, is there?

MR. CATALDO: Yes, sir.

THE COURT: Where is that? Is that in any part of your return where you stated that? Yes or no.

MR. CATALDO: I got proof of the fact that I went to Washington.

THE COURT: I didn't ask you that. You don't seem to comprehend, whether it's because you don't hear or what.

I ask you this question. If you don't hear me you tell me.

MR. CATALDO: All right, sir.

THE COURT: Have you made any claim and itemized it with respect to any trip to Washington on or about this date?

MR. CATALDO: Yes, sir.

THE COURT: Where is it?

MR. CATALDO: You mean to the client?

THE COURT: No, to the government.

MR. CATALDO: Yes, sir. I wrote an affidavit.

THE COURT: Wait a minute. Please sit down now, will you. You are calmer when you sit down.

MR. CATALDO: Yes, sir.

THE COURT: Mr. Reilly, is there any claim anywhere in the papers, in the return, for a trip to Washington on or about 9/12?

MR. REILLY: Your Honor, Mr. Cataldo did submit an affidavit during the course of the appellate conferee's hearings. That's about all. He submitted an explanation for that particular check.

THE COURT: I see.

MR. CATALDO: It was allowed by the--

THE COURT: Never mind. Will you keep quiet when there's no necessity for talking.

Does it ask for $50?

MR. REILLY: It asks for $50.

THE COURT: What do you expect him to have?

MR. REILLY: We don't know what the business relationship is yet on this record.

28x THE COURT: I will ask the question.

Why did you go to Washington?

MR. CATALDO: I went to a hearing of a Board of

Contract Appeals.

BY MR. REILLY:

Q This involved the Ove Gustavsson Company?

A It was on Ove Gustavsson Company.

Q Is this the same company for which you received moneys of $16,600?

A No, sir.

THE COURT: Did you receive reimbursement from the company for this expense?

THE WITNESS: No, sir.

THE COURT: Why didn't you?

THE WITNESS: They went bankrupt.

Q When did they go bankrupt?

A I put them in bankruptcy in '69.

MR. CATALDO: I got a judgment, Judge, -- my affidavit in the Supreme Court, New York County, in my action against the Gustavsson Contracting Company, where I list my expenses for that company. This is an exhibit in that court.

On the basis of this I recovered a judgment--

THE COURT: I am going to allow this $50.

MR. CATALDO: I --

THE COURT: I have allowed it. Keep quiet. There's nothing more to say. You can't complain after I have done that.

MR. CATALDO: In addition, sir, --

THE COURT: I am not concerned with the $50.

What else there may be must relate to something else.

MR. CATALDO: May --

THE COURT: Will you please keep quiet while I am talking.

MR. CATALDO: Thank you, your Honor.

THE COURT: Please have some degree of order here.

We have another cash item of 8/15 of $50.

What was that for?

MR. CATALDO: After I came back from Washington I had a date to play golf with Henry Magenheimer, **Walker Hayes** and Charlie DeMaria at the Huntington Crescent Club. I was invited to the golf club. I brought cash with me to disburse on that date for these fellows. That was $50 on that Friday.

THE COURT: What did you spend $50 for on Friday? Was that drinks and food?

MR. CATALDO: Drinks and food, yes, sir, and traveling expense to the club.

THE COURT: You sit down. Mr. Reilly may

question you.

BY MR. REILLY:

Q Mr. Cataldo, did you keep a record of that expenditure contemporaneously as to the time, date and persons involved?

A Yes.

Q What record is that?

A The checks in my check stub.

Q Do the names of Mr. DeMaria and --

A I wasn't required to list names in '63.

THE COURT: Strike that. You get into the most irrelevant ideas here. As a lawyer you ought to know what is relevant.

Q Do the names of those three or four gentlemen appear on your checkbook stub or your cancelled check?

MR. CATALDO: I object to the question as immaterial and irrelevant.

THE COURT: Overruled.

I don't think it would make much difference or not, Mr. Reilly.

You may answer.

MR. REILLY: Your Honor, we move to disallow this expense first for the reason that it's not a proper expense.

THE COURT: I am trying to get an answer, if he wants to put the answer in. We have these prolonged pauses frequently.

MR. CATALDO: I reported who were present at the conference to the appellate conferee in the same affidavit.

THE COURT: That is not material here.

MR. CATALDO: I --

THE COURT: Listen, he is asking you if you have it on the check stub. Do you or don't you? You don't seem to realize what you are allowed to do. I give you plenty of leeway and you don't come up with anything sometimes.

MR. CATALDO: No, sir, I don't show any names.

THE COURT: All right.

That is all on the proof?

MR. REILLY: That's all, your Honor.

THE COURT: I will disallow it.

MR. CATALDO: May I finish my proof, please?

THE COURT: I thought you had.

What other proof is there?

MR. CATALDO: Yes. I want to say that I reported these peoples' names to the appellate conferee.

THE COURT: Yes. And I have said several times, Mr. Cataldo, --

MR. CATALDO: I --

THE COURT: Wait a minute. I said several times that is not material. Will you please sit down again if you are through.

MR. CATALDO: May I offer a copy of the affidavit in evidence, please?

THE COURT: You may as a statement to which you would testify.

Is that what you want to do?

MR. CATALDO: Yes, sir.

THE COURT: I will take it. After it is marked I will look at it.

(Plaintiffs' Exhibit 16 marked for identification.)

MR. CATALDO: At this time may I please state the facts of how I operate my business?

THE COURT: No, you may not.

MR. CATALDO: That is germane.

THE COURT: I am not concerned with the way you operate your business. Each one of these items must stand on its own legs and its own bottom.

MR. CATALDO: But only in the context of how the business is operated.

THE COURT: I am not concerned with how you operate unless it relates to a certain claim. That is all. Sit down.

MR. CATALDO: May I make an offer of proof then?

THE COURT: No, you may not. You stated what the offer of proof is. I am not taking any further testimony.

MR. CATALDO: There are a lot of things--

THE COURT: Will you please sit down.

MR. CATALDO: I will sit down if you ask me to.

THE COURT: Perhaps I leaned over backwards to look at this affidavit. I suppose it's only a part of this affidavit. I will look to see if I can --

MR. CATALDO: Yes, sir. I think it's on the third page.

THE COURT: All right.

MR. REILLY: The bottom of page 3 of the affidavit, August 15.

THE COURT: I see some portion of this affidavit, the bottom of page 3. It apparently relates to this cash check. I have read it. I must disallow it. The proof is not sufficient to prove by a fair preponderance of the evidence that this is a valid deductible business item.

I will let the portion of this affidavit be marked in evidence.

MR. REILLY: I understand it is being offered only as to what Mr.Catldo would testify tO--

THE COURT: It is admitted only to that extent.

Will you mark this portion here and put a bracket to indicate what portion is covered.

MR. CATALDO: The check has not been marked. I thought it had been marked.

THE COURT: You will concede that the cash check was drawn?

MR. REILLY: That is correct.

THE COURT: And collected?

MR. REILLY: That is correct.

THE COURT: The next page, Men's Club of Forest Hills, 10/17, $10.

We start off with Segno, 10/12, Tiro A.Zegno, $43.50.

What was that?

xxx (Plaintiffs' Exhibit 16-A received in evidence.)

MR. CATALDO: I have the check here.

THE COURT:Offer the check first.

MR. CATALDO: Here is the check.

THE COURT: Mark it for identification.

(Plaintiffs' Exhibit 17 marked for identification.)

MR. CATALDO: This check --

THE COURT: Let's dispose of this check. Show it to Mr.Reilly.

MR. REILLY: I have seen it, your Honor.

THE COURT: Give the check to Mr. Reilly.

MR. REILLY: I have seen it.

THE COURT: Any objection as far as it goes?

MR. REILLY: No objection.

THE COURT: Received.

(Plaintiffs' Exhibit 17 for identification received in evidence.)

THE COURT: In the first place, who is Segno?

MR. CATALDO: Segno is Italian for the New York Rifle Club. The New York Rifle Club is a club at MacDougal street.

THE COURT: What was the check for?

MR. CATALDO: It has a famous restaurant there. I used to belong to the club. I took -- I took Mrs.Walsh and I took Mrs. Gitlan there and Mrs. Welsh, and these were clients of mine. I had written their wills and I took them out to dinner with my wife.

THE COURT: What expectation of business was there after they made their wills before they died?

MR. CATALDO: It is good will and this is the way I have been operating. It is my custom to -- I had no way of advertising my wares. I had no way of advertising at all.

THE COURT: I understand. In short, it was for good will. I understand.

MR. CATALDO: It is my usual and customary way of doing business.

THE COURT: You don't have to expatiate on that.

MR. CATALDO: I assume you knew it, Judge. You are deciding things against that very factor. The law permits me to make a decision whether I am going to incur a business expense or not. You are saying that I have not made that decision.

THE COURT: Are you through with this outburst?

MR. CATALDO: My fact is --

THE COURT: Will you please sit down. I have heard enough on this phase unless you have got some facts.

Mr. Reilly, any questions?

MR. REILLY: Yes.

BY MR. REILLY:

Q Mr. Cataldo, do you have any record that was made at the time indicating the name of the individuals who were entertained?

A Yes, I made it in my diary and I --

THE COURT: No, he is asking now here. It's senseless to say you got it up in the attic or somewhere.

MR. CATALDO: That is immaterial and irrelevant and I object to the question.

THE COURT: Overruled, counsellor.

MR. CATALDO: The best answer I can give is that I had such a record. I relied on that record to make this affidavit, which is an exhibit now before the appellate conferee, of who was at the dinner that night. They were all -- they were all people who were doing -- with whom I was doing business excepting one. That one I expected to get business from. When I did not -- I have not seen her since.

Q Is it your testimony that this expense was principally for good will?

A Yes, it was principally good will. That's what it was.

THE COURT: No more speeches on it. Just answer the question. Don't go on with an outburst every time.

MR. REILLY: Based on that, your Honor, -- good will is a capital expenditure as opposed to a 90-day operating expenditure.

MR. CATALDO: That is not so in connection with a law practice where a lawyer is proceeding in trying to acquire business. If it weren't for my efforts in those earlier years, I wouldn't have had the business I have today. The fact that I have the business I have this year particularly is only -- is a reflection of the money I spent in trying to acquire this friendship among my neighbors. They are getting the benefit of it, not me. I haven't made a penny.

THE COURT: Will you please sit down. You have said enough. I think you have said enough on facts and enough on argument. I don't know of any other argument.

MR. CATALDO: Those are the facts, sir.

THE COURT: All right. There's been a kind of a mingling of facts and argument here. Maybe that can't be helped, unfortunately.

Do you want to say anything further about this?

MR. REILLY: There's no business relation stated here. It was good will. There's no testimony as to what particular business purpose was realized or discussed at this meeting. I think it has to be disallowed.

THE COURT: I am about to determine this.

MR. CATALDO: May I call attention, please, to American Jurisprudence, Volume 34, paragraph --

THE COURT: What does it say?

MR. CATALDO: That good will expenses are deductible. That's what it says, particularly for a lawyer.

THE COURT: What do you say, counsellor, to that generalization?

MR. REILLY: We would disagree with the American Jurisprudence quotation because everything that Mr. Cataldo does could be interpreted as good will, whether he takes out a neighbor or a friend. This is no different than him entertaining guests at the West Side Tennis Club that are neighbors in Forest Hills. He indicated these individuals are all people he knows and no business was discussed at this meeting.

MR. CATALDO: That last fact is not true. That last statement of fact is not true.

THE COURT: Don't shout.

MR. CATALDO. This is the type of thing I have been meeting with this gentleman.

THE COURT: You don't need to criticize him. He is doing his duty. He is attempting to represent the United States, which does have an interest here. I don't want any villification of any lawyer unoess there's some ground for it.

MR. CATALDO: He knows --

THE COURT: You sit down.

MR. CATALDO: He knows the facts, sir.

THE COURT: I have heard enough on this. You disagree with his statement. All right.

I am going to disallow it. I don't believe it's been proved by a fair preponderance of the credible evidence with sufficient detail or sufficient purpose to warrant it as a business deduction, and I, therefore, disallow it.

I come next to the --

MR. CATALDO: May I call attention to the section --

THE COURT: I have listened to your argument. I am not going to have a rear-end argument every time I have passed on anything, when I have asked you if you have said your say. I am not going to listen.

MR. CATALDO: Your Honor --

THE COURT: I shouldn't listen.

MR. CATALDO: Your Honor made a decision while I was looking for something.

THE COURT: I can't help that, if you want to look for something and you don't hear what I say. That's your misfortune. That's all on that one.

10/17, Men's Club of Forest Hills, $10.

What is that for, a dinner or something?

MR. CATALDO: This check doesn't seem to have been marked. It should be marked.

THE COURT: You are offering it, are you?

MR. CATALDO: Yes.

THE COURT: Let the clerk mark it for identification. I think you ought to know that by this time.

MR. CATALDO: This is a different check.

THE COURT: Is this a $10-item?

MR. CATALDO: I have a $10-item.

THE COURT: Let me see the check.

MR. CATALDO: That is a previous check which doesn't seem to be marked, although I handed it up. It hasn't been marked yet.

THE COURT: This is a check of August 8th.

MR. CATALDO: That is a golf club outing I went to.

THE COURT: August 15. There was no dispute about that, was there, Mr. Reilly?

MR. REILLY: No, there was no dispute.

THE COURT: It's unnecessary. He has conceded that you drew a check for $50 and got the cash. I disallowed it.

We are now on this $10-item of 10/17, Men's Club of Forest Hills.

(Plaintiffs' Exhibit 18 marked for identification.) x

THE COURT: Is that the check?

MR. REILLY: It's not necessary.

THE COURT: Let it be marked in evidence.

(Plaintiffs' Exhibit 18 for identification received in evidence.)

THE COURT: What was it for, Mr. Cataldo?

MR. CATALDO: Let me see the check, please.

This is membership of the Men's Club in Forest Hills. I joined that for the purpose of seeking business amongst my neighbors.

THE COURT: Is that all you want to say?

MR. CATALDO: I used it in the customary way, as I would join a lot of things in order to seek business.

THE COURT: You were quite a joiner. There's no doubt about that.

MR. CATALDO: That's right. I tried to solicit--

THE COURT: You don't need to expatiate on it. That goes apparently as a matter of fact.

All right. Any questions? I don't think any are necessary, counsellor.

MR. REILLY: No, your Honor.

THE COURT: It is disallowed. It is not a regular business expense under the rules, and the proof isn't sufficient to warrant its allowance.

I, therefore, pass to 10/28, the Italy Chamber of Commerce, $50.

Do you have a check on that?

MR. CATALDO: Yes, sir.

(Plaintiffs' Exhibit 19 marked for identification.)

THE COURT: All right, show it to Mr. Reilly.

Any objection?

MR. REILLY: No objection to the check, your Honor.

THE COURT: Mark it in evidence.

(Plaintiffs' Exhibit 19 for identification received in evidence.)

THE COURT: What was it for, Mr. Cataldo?

MR. CATALDO: They were for two tickets at a dinner of the Chamber of Commerce that I belonged to. Those are tickets -- these things are specifically stated in American Jurisprudence.

THE COURT: Where in American Jurisprudence? Do you have cases? The citing of an encyclopedia without cases is like apple pie without cheese.

MR. CATALDO: The good will section is 57 --

THE COURT: Yes, I know.

Anything more specific about that dinner?

MR. CATALDO: Yes, sir. There is something in there --

THE COURT: Where?

MR. CATALDO: In American Jurisprudence.

THE COURT: I don't mean law, I mean facts.

MR. CATALDO: They were two tickets for the dinner that is held.

THE COURT: How many?

MR. CATALDO: Two.

THE COURT: Two?

MR. CATALDO: Yes, sir.

THE COURT: $25?

MR. CATALDO: Yes, sir, $25 each.

THE COURT: Who were there for the 25 each?

MR. CATALDO: My wife and I. We sat at a table with a lot of other members and a trade association --

THE COURT: I know what a chamber of commerce is. In fact, I must confess I was once president of one.

MR. CATALDO: That is a business deduction.

THE COURT: That is what you say. Is that all the facts you have?

MR. CATALDO: Yes.

THE COURT: All right.

MR. REILLY: Your Honor, you previously allowed the dues to the Italy Chamber of Commerce.

THE COURT: This is different. This is disallowed.

MR. CATALDO: I --

THE COURT: Will you please sit down. You have argued and then you sputter again every time.

MR. CATALDO: I got another idea while he was getting up.

THE COURT: All right, bring up your idea. What is your other idea? You and your wife went to the dinner, you paid for the tickets yourself, I assume, not your wife, and you paid $50, 25 for each. What else is there, facts?

MR. CATALDO: The conferee allowed the dues of $100, the Italy Chamber of Commerce, when I explained the matter to him. Inasmuch as these are tickets for that association, attendance at that association where I met other members and I sat with other members -- as a matter of fact, I got friendly with the Schroeder Brothers, the head of Schroeder Brothers,as a result of that, sitting next to him at that table.

THE COURT: Are you finished now?

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MR. CATALDO: I also move then because of the fact that the conferee allowed the $100 dues that your Honor reconsider your disallowance of that $100, and also at the same time the $12.50 that you disallowed. That was for the luncheon ticket of the same association. This $50 is a must to get to the -- to meet the association members. That is an allowed item and deductible under the rules despite what Mr. Reilly says, and he knows better. I'm being badgered,

THE COURT: You needn't make any such remarks such as that.

Are you through now? Listen carefully. Are you through with the facts?

MR. CATALDO: Yes, sir.

THE COURT: Are you through with argument?

MR. CATALDO: Yes, sir.

THE COURT: Don't expect to get in again.

Now, Mr. Reilly, I will listen briefly.

MR. REILLY: The only new argument that's been presented on this matter is that the appellate conferee apparently allowed the $100 dues deductions for the Italy Chamber of Commerce. As stated in our brief, we are not bound by what the appellate conferee did with each particular deduction. The taxpayer here must establish the tax that is actually due.

It's the government's contention that if the appellate conferee allowed that deduction to the Italy Chamber of Commerce, it was erroneous, and we still contest it.

THE COURT: My disposition --

MR. CATALDO: May I make a statement?

THE COURT: You start in after you said you have finished. You amaze me.

MR. CATALDO: I am entitled to reply; am I not?

THE COURT: I thought you were through. We can go on playing pingpong here all morning.

What do you want to say?

MR. CATALDO: What I want to say -- this was an admission by the government that it was deductible, and that is evidence.

THE COURT: I don't hear any admission by the government about this $50.

Was there any such admission by the appellate group?

MR. CATALDO: The appellate allowed it, allowed the $50 deduction.

MR. REILLY: I will concede that for the time being, for the point of argument.

THE COURT: Is that binding?

MR. REILLY: It is not binding, your Honor.

MR. CATALDO: It's an admission of the allowability, the deductibility. That was done by the expert of the government.

THE COURT: What do you say, Mr. Reilly?

MR. CATALDO: And the burden shifts to him to explain that it wasn't deductible.

THE COURT: Do you agree with that? Do you agree with what he just said?

MR. REILLY: No, your Honor. We disagree, your Honor, and we cited case authority to that effect in our memorandum of law.

THE COURT: Are you through now?

MR. CATALDO: I would like to offer two cases on the point that are not in my memorandum. I'm sorry, I can't find the citation. I will come across them in a little while.

I respectfully ask your Honor to reserve decision on all these things--

THE COURT: I am not going to reserve decision. If I did I would have a great deal of trouble and so might you.

MR. CATALDO: I --

THE COURT: I want to explain why. You will firstly have to have the record, and I don't think the record is necessary.

Secondly, you will have to prepare and submit proposed findings on every one of these items. I am not going to get into that. If you have the references here now, tell me. If you haven't, we are going right on.. You are expected to be ready for trial, to proceed.

MR. CATALDO: If you will give me a minute I will get them for you.

THE COURT: Well, find them.

(Pause.)

THE COURT: We will have a recess while you find them.

(Recess.)

THE COURT: I think you were going to tell me something about some statement in American Jurisprudence. What is it?

MR. CATALDO: The one about good will is Section 5793.. It says:

"Good Will Entertaining: Good will entertainment expenses to maintain or create good will may be deductible under either the business-meal rule or the associated entertainment rule."

THE COURT: That is, if there's proof.

MR. CATALDO: That's not proof.

THE COURT: Go on. Read the rest of it.

MR. CATALDO: This is what it says about good will.

I was going to give you citations of two cases about the taxpayer not having the burden, where they go outside the deficiency. Here they are. The first case is Little v. --

THE COURT: Are they in your brief?

MR. CATALDO: No, they are only pencil notations.

THE COURT: All right.

MR. CATALDO: Little v. Commissioner, 213 F. 746 and Maxwell v. Campbell, 205 F.2 461.

THE COURT: All right. These two dinner tickets, I still disallow that.

MR. CATALDO: I --

THE COURT: Are you through? I am entitled, Mr. Cataldo, to a reasonable degree of courtesy even though I happen to be the judge. It's not because of me, it's because of the court. Repeatedly when I decide something, then you perk up and you go over these things again. Why should I do that? You think of something or whatever it is.

Are you through on this item of $50 for the Italy Chamber of Commerce? This is the last call.

MR. CATALDO: The only comment I would have about that is I haven't yet found it in the recess time. I cited in my brief, I believe, to American Jurisprudence that trade associations, that dues and tickets to functions--

THE COURT: Perhaps in certain instances.

MR. CATALDO: -- are deductible.

THE COURT: Are you through?

MR. CATALDO: Yes, sir.

THE COURT: Stay that way, will you, please.

I still disallow the $50 of 10/28 to the Italy Chamber of Commerce for two dinner tickets for the taxpayers.

Now, I pass on to this Women's Club. Have you got a check on that?

MR. CATALDA: Yes, sir.

THE COURT: Dig it out.

MR. REILLY: The government concedes that the check was paid.

THE COURT: All right. The government concedes that it was paid, counsellor.

Do you hear me?

MR. CATALDO: Yes, sir.

THE COURT: Just put the check down and away. You don't need it.

Now, I ask you what that was for? Was it a membership?

MR. CATALDO: Yes, sir.

THE COURT: Was that a membership for Mrs.Cataldo?

MR. CATALDO: Mrs. Catoldo's membership in the Women's Club of Forest Hills.

THE COURT: Was she soliciting business for you?

MR. CATALDO: Yes, sir.

THE COURT: : She was?

MR. CATALDO: We both help each other in that respect. I used my wife to get me business. If you want evidence of what she got, she got the two estates in the Beier family because of her activity in Forest Hills. She got the Lane estates, two Lane estates in 1964, '65 because of her activity in Forest Hills. When she became a secretary of this association, our name went all over Forest Hills.

THE COURT: That is quite a broad statement.

MR. CATALDO: My wife and I, we both joined these clubs --

THE COURT: You mean she talked about your capacity as a lawyer and so forth to these women?

MR. CATALDO: Yes, sir. Every time she got a chance, she did that.

THE COURT: I see.

BY MR. REILLY:

Q Is Mrs. Cataldo here to testify today?

A She's out in Mineola trying to tell the judge out there that I'm engaged in this court. That's where she is today. She's got an affidavit of --

THE COURT: She isn't being produced, is she?

MR. CATALDO: If you want her --

THE COURT: I don't want anybody. That is up to you.

MR. CATALDO: I didn't intend to produce her.

THE COURT: All right.

You rest on this?

MR. REILLY: We rest on the plaintiff's testimony.

THE COURT: This is disallowed for obvious reasons. It is not a proper deductible item for the business of the husband, merely because the wife may be advertising his legal capacity and so forth amongst the women of a Forest Hills women's club.

I pass now to the Thomassen matter, 11/27 --

MR. CATALDO: I haven't --

THE COURT: Wait a minute. Why do you interrupt me so many times?

J. F. Thomassen, $36.46.

Do you have a check?

MR. CATALDO: I didn't find that check last night.

THE COURT: All right. Do you have any proof as to what it's about?

MR. CATALDO: It was for some kind of a repair bill.

THE COURT: Repair of what?

MR. CATALDO: I don't remember that.

THE COURT: Is that all you want to say?

MR. CATALDO: Yes, sir.

THE COURT: It is obviously to be disallowed. There is no proof whatsoever which warrants its deduction as a specific business expense.

Now, I pass I think to the next item which is a cash item, 12/9, $100. I think we haven't taken that up.

Do you have any check on that?

MR. CATALDO: Yes, sir.

THE COURT: Produce it.

MR. CATALDO: Here's the check. I offer it in evidence.

(Plaintiffs' Exhibit 20 marked for identification.)

THE COURT: All right. Convey it to Mr. Reilly.

MR. REILLY: Mr. Cataldo, we are not objecting to admitting it in evidence.

THE COURT: This shows cash check. What was it used for, if you can say?

MR. CATALDO: Yes, sir. I cashed that check myself at the bank on the day of the check and I brought that cash out to the clerk of the Civil Court of Queens County to pay $100 worth of rent owed by the daughter of Mr. Lewis.

THE COURT: Who is Lewis?

MR. CATALDO: A client of mine..

THE COURT: Why did you pay --

MR. CATALDO: I paid the rent. There is no other way of getting the rent paid. It had to be paid to prevent a default of some kind to be issued. I ran out to pay this myself. I paid that $100 on that case.

THE COURT: I see.

(Plaintiffs' Exhibit 20 for identification

received in evidence.)

THE COURT: Anything else now on fact?

MR. CATALDO: Yes, sir. I got paid that $100 plus a fee by Mr. Lewis the following year and I reported the whole amount in the following year. I told this, and I offered to show this to the government, and it's in my affidavit which you have already seen with other items mentioned.

THE COURT: Do you want to concede that? If that is true, this would be --

MR. CATALDO: I have one more statement. Mr. Levine checked this out in my office and I showed him the facts, the records in my office.

THE COURT: All right.

MR. REILLY: Can Mr. Land inquire on this?

THE COURT: Yes.

MR. CATALDO: I object to two lawyers questioning me, sir.

THE COURT: Overruled. There is no objection to that.

Different lawyers may ask different questions and question on different phases of it. You may sit down.

MR. CATALDO: I take exception to the ruling.

THE COURT: You can take three or four. It doesn't do you any good. That's an absurd objection.

BY MR. LAND:

Q You mentioned that Mr. Lewis was your client; is that correct?

A And so was Valerie, his daughter. I went out there for her account,

THE COURT: Just answer the questions which he asks you. You already testified.

Q This check was paid with respect to Mr. Lewis' daughter's legal differences; is that right?

A Yes.

Q What legal differences did Mr. Lewis' daughter have in which you represented her?

A I went down to avoid a dispossess by paying this rent.

Q Dispossess of whom?

A Of Valerie Lewis.

Q From what?

A From her apartment.

Q You received a fee from Mr. Lewis daughter in respect to representing her in this?

A I received a fee from her father.

Q For this one action, preventing a default; is that correct?

A I don't understand you.

Q Did you represent this daughter in a number of matters or solely with respect to preventing this default that you referred to?

A I represented Mr. Lewis and his daughter and his wife whenever the occasion came up. I don't understand. I don't know what you are driving at.

33x THE COURT: What is the last question?

Q Is it your testimony that you represented Mr. Lewis, Mr. Lewis' wife and Mr. Lewis' daughter on numerous occasions, one of which occasions was this matter involving the daughter's being dispossessed from an apartment?

A That's what I said.

Q Did you receive a separate fee for this one occasion on which you represented Mr. Lewis' daughter?

A Yes, I did.

Q How much was that fee?

A It's in that affidavit. I don't have the rest of the records here.

THE COURT: Look at it and see if it refreshes your recollection. Look at your own affidavit.

THE WITNESS: The amount of the fee and the reimbursement -- the total amount is not stated in the affidavit. I told Mr. Levine about it.

THE COURT: Yes, you have said that so many times and I have told you that isn't proof before this Court.

Now, I want to ask you, if you will let me interrupt you --

MR. LAND: Yes, your Honor.

THE COURT: The amount of this charge here, this $100 which you say you paid to some landlord, I believe, that was later collected by you, was it?

THE WITNESS: I paid it in the registry of the court. It was paid in December, 1963. That was an expense of a case that I had in 1963.

THE COURT: All right. Now you may sit down.

THE WITNESS: Yes, sir.

THE COURT: I said you may sit down.

THE WITNESS: All right, sir. Thank you.

THE COURT: Do you have any further facts about this? I am going to rule.

MR. CATALDO: Well, no. I want to call your Honor's attention --- this was an expense incurred in 1963. I wasn't reimbursed in 1963 for the expense. It was an ordinary expense of doing business.

THE COURT: That is the rub, counsellor.

Are you ready now? I am going to decide it.

Do you want to say any more?

MR. CATALDO: Just to call your Honor's attention to the fact it was a regular business expense.

THE COURT: That is your claim.

Are you through?

MR. CATALDO: Yes, sir.

THE COURT: This must be disallowed. I see no reason why this should be allowed as a business expense of the kind which has been stated.

I pass now to --

MR. CATALDO: I want to make a motion. I want to make a motion. It's impossible for me to get a hearing here.

THE COURT: That's nonsense, counsellor. I have carefully asked you from time to time to state the facts and then to state the law. That objection is overruled.

We will continue.

MR. CATALDO: That item is an expense item. I paid it out of my pocket. I reported to the government in 1964. There is no proof to the contrary. What is the matter with this Court? I don't understand it.

THE COURT: That is unfortunate, counsellor.

MR. CATALDO: It is unfortunate.

THE COURT: May I remind you that you have gone over into the field of acts and statements which are, in effect, contempt of court. I am very much irked by it and I believe reasonably so.

Now, I will restate this disposition. This money here, this $100 paid to some landlord of a client or client's daughter, whatever it was, is not a business expense which is reasonable and there is no proof of it.

I would say this for the record: The taxpayers had no reason for putting in this $100 in 1964, whenever it was, as a receopt as income.

Now, I come to Scialo, 12/19, $20.

Do you have a check on that?

MR. CATALDO: Yes, sir.

THE COURT: Produce it. Offer it.

MR. CATALDO: Here it is.

(Plaintiffs' Exhibit 21 marked for identification.)

MR. LAND: No objection.

THE COURT: Mark the check in evidence.

x (Plaintiffs' Exhibit 21 for identification received in evidence.)

THE COURT: It's really showing payment to Scialo, if it does, of $20.

MR. CATALDO: She --

THE COURT: Wait. There is nothing done till I give you the question. I am forced to proceed that way for certain reasons.

May I see the check? The check is December 19, 1963 for $20 to Fannie Scialo.

What was that for?

MR. CATALDO: She performed some services.

THE COURT: What services?

MR. CATALDO: She performed services of some sort. I don't remember. I don't remember whether the question came up before or not.

THE COURT: Never mind whether it did or not. Can you state what it was for?

MR. CATALDO: No, sir, not at this point.

THE COURT: Disallowed.

12/20, cash, $40. Is there a check?

MR. CATALDO: Yes, sir.

THE COURT: Produce it and offer it.

(Plaintiffs' Exhibit 22 marked for identification.)

MR.LAND: No objection.

THE COURT: Mark it in evidence.

xxx (Plaintiffs' Exhibit 22 for identification

received in evidence.)

THE COURT: This check for $40 is dated December 20, 1963 and there is an endorsement on it which looks like building service employee. What was that, a Christmas present or something?

MR. CATALDO: Yes, sir, down at my office. It's a Christmas present to the building service employees at 101 Maiden Lane or 1 Cedar Street where I kept my offices. I drew the cash out of my own account and I handed the cash in toto to Mr. Topping. He's the building service employee.

THE COURT: Was it your custom to make --

MR. CATALDO: Yes, sir.

THE COURT: Will you listen to my question.

Was it your custom to make these gifts around Christmastime?

MR. CATALDO: Yes, sir.

THE COURT: Is that all you want to say?

MR. CATALDO: It's the usual expense incurred in buildings downtown. I decided I wanted to do it; yes, sir.

THE COURT: All right.

I am going to allow this, Mr. Reilly.

I think there was one item we had some

interruption about. It's 3/19, Lennon, $450. I think that related to a case you had and you got $1300, was it, $1,350. You put the money in your trust account; is that right? I am trying to summarize this.

Did you put it in your trust account?

MR. CATALDO: Yes, sir.

THE COURT: And then did you pay as a check to Lennon $450?

MR. CATALDO: Yes, sir.

THE COURT: Is that in evidence, gentlemen?

MR. CATALDO: Yes, sir.

MR. REILLY: Yes, it is, your Honor.

THE COURT: All right.

Do you want to add anything about that in your facts, first?

MR. CATALDO: I thought you had allowed that item, sir.

THE COURT: I don't think I did. Did I?

MR. REILLY: No, you reserved decision.

THE COURT: That was the item on which I reserved, counsellor.

What do you have to say on facts?

MR. CATALDO: I told you that it was --

THE COURT: If you are satisfied with the record which has been made, say so.

MR. CATALDO: I want to add the fact that it is usual for me to accept business from lawyers and it's customary for me to pay them one-third. I handled this matter for him. We are talking about a deduction. The deduction was taken in '63 because it was paid in '63.

THE COURT: Paid to Lennon?

MR. CATALDO: Paid to Mr. Lennon; yes, sir. I got a bill from Mr. Lennon. I will offer that.

THE COURT: All right.

MR. CATALDO: I want to take up a few things, sir.

THE COURT: The first thing is this check.

MR. CATALDO: There's a bill.

THE COURT: Where is the check? Is that a receipted bill?

MR. CATALDO: Yes, sir.

(Plaintiffs' Exhibit 23 marked for identification.)

THE COURT: Offer it.

MR. REILLY: No objection.

(Plaintiffs' Exhibit 23 for identification received in evidence.) xxx

THE COURT: This seems to be a receipted bill.

Is this Lennon's signature on this exhibit? Is it Lennon's signature on the exhibit?

MR. CATALDO: Yes, sir.

THE COURT: You are familiar with his signature?

MR. CATALDO: Yes, sir.

THE COURT: I am going to allow this, Mr. Reilly. I think it's the customary thing. It may be deplored in certain instances, but I am going to allow it.

MR. REILLY: I would like to ask a few questions on cross-examination.

THE COURT: I will allow it if you think it is helpful.

BY MR. REILLY:

Q Mr. Cataldo, did you receive moneys in connection with that case prior to paying Mr. Lennon?

THE COURT: I didn't hear your question.

Q Did you receive moneys in connection with that case prior to your paying Mr. Lennon?

A Oh, yes, yes.

Q Whom did you receive the moneys from?

A Howard Oil Company.

THE COURT: Was that your client or was it a defendant?

THE WITNESS: That was John's client. I was handling the matter. It was my client. I was the attorney of record.

Q The Howard Oil Company, sir?

A Howard Oil, yes.

Q When did you --

A Wait a minute. I don't know whether it's Howard Oil or Peerless, but something like that.

Q All right.

When did you receive the money and how much did you receive?

A I don't remember that..

THE COURT: What was it for, this money?

THE WITNESS: It was for my services in a case I handled.

THE COURT: Was it the same case in connection with which Lennon allegedly received $450?

THE WITNESS: Yes, sir.

Q Did you receive it in 1963?

A I don't know whether I received it in '63 or not.

Q Do you have any specific recollection as to whether you declared the $450 that eventually went to Mr. Lennon as income?

A Yes, I declared the whole fee. I paid Lennon 450 of it.

Q What is the basis of your recollection?

A Because that's what I do.

Q That is your general practice?

A Yes.

Q Is that the only basis?

A Yes, sir.

MR. REILLY: Your Honor, we move to disallow this for failure of the witness to substantiate that he did, in fact, pay this 450 as income.

THE COURT: I see your point.

What he is saying, Mr. Cataldo, is that, in substance, you received certain money and say you paid it to him. Let me quiz you a little bit.

MR. CATALDO: I don't remember at this point- -

THE COURT: I am going to ask a question if you don't mind.

MR. CATALDO: Not at all.

THE COURT: Thank you.

Where did you get the payment from the defendant? How was that paid and to whom?

MR. CATALDO: It was paid to me.

THE COURT: As attorney?

MR. CATALDO: No, it was paid to me personally, $1,350.

THE COURT: Why was it paid to you personally? I don't understand that one.

MR. CATALDO: It's very simple. It was a fee I had earned and which I had billed.

THE COURT: What was the amount you received and from whom was it received?

MR. CATALDO: It was received from the client and it was $1,350. I don't remember whether it was received in '62 or '63. It could have been received in '62.

THE COURT: Why didn't you put this in '62 then? You get into --

MR. CATALDO: It was paid in '62. Whenever I received it, it was reported. This gentleman has no evidence to the contrary.

THE COURT: Stop shouting. You don't need to shout.

MR. CATALDO: All right. The gentleman raises a question --

THE COURT: Sure he raises a question. He has a right and even a duty to raise a question. Don't you criticize him because he is cross-examining you.

MR. CATALDO: That is not the point. What I object to, his raising a question is not equivalent to evidence. His raising a question is only raising a question. If he has any evidence, let him produce it.

THE COURT: Look, counsellor, I shouldn't have to tell you that a lack of evidence is a suitable question to elicit. I am sorry that you get to act so personally concerned, but it's inevitable perhaps because of the situation of you being both client and attorney. Now, I am trying to ascertain something here which might justify this in a review of my previous initial determination.

You say that you got how much from the client?

MR. CATALDO: $1,350.

THE COURT: Have you got that check here?

MR. CATALDO: No, it's the client's check.

THE COURT: Client's check obviously. All right.

Do you have any record from your books of the receipt of that money?

MR. CATALDO: I don't keep any books and receipts and disbursements.

THE COURT: All right. That itself doesn't help you when you get into these issues.

MR. CATALDO: If I knew this question was coming up in this fashion --

THE COURT: Don't argue that way. You say you got this, a check from Howard?

MR. CATALDO: Yes, sir.

THE COURT: A corporation?

MR. CATALDO: Yes, sir, a corporation.

THE COURT: You deposited that check in the bank?

MR. CATALDO: Yes, sir.

THE COURT: In your own funds?

MR. CATALDO: Yes, sir.

THE COURT: And then you say you drew a check to this man; is that right?

MR. CATALDO: Yes, sir.

THE COURT: Did we have that in evidence? Is that here?

MR. CATALDO: Yes, you have the check and you have his bill.

x THE COURT: All right. There is proof of that then.

I am going to still allow it, Mr. Reilly. I think it has been proved sufficiently. You may doubt it, but that's it.

We have finished the items now. The one which was reserved has been determined. As far as I can see, the plaintiffs' case is closed unless there is some other evidence which is relevant here.

MR. CATALDO: Yes, sir.

THE COURT: Do you have any?

MR. CATALDO: Yes, sir.

THE COURT: What is it, generally speaking?

MR. CATALDO: First of all I want to be sure that there is no -- that the government concedes that I filed a proper proof of claim for refund and that this suit was timely brought.

THE COURT: Was that admitted in the pleadings?

MR. REILLY: It was not admitted in the pleadings. It is now admitted that a claim was properly filed and it was timely filed.

THE COURT: Anything else?

MR. CATALDO: Yes, sir. I wanted to make a statement of what--

THE COURT: You don't make statements.

MR. CATALDO: I want to offer proof of the fact that the government made three audits of my books before they issued the deficiency letter.

THE COURT: They might concede it.

Is that so?

MR. REILLY: Yes.

THE COURT: It is conceded.

MR. CATALDO: Very well. Thank you.

And during the course of such audits they did not find any unreported income.

THE COURT: Will you stipulate to that. I don't know.

MR. REILLY No, we won't stipulate to that, your Honor.

MR. CATALDO: I will so testify then. I don,t need his concession. That is the truth.

THE COURT: They won't concede it.

Anything else?

MR. CATALDO: Will my statement be accepted as evidence of the fact?

THE COURT: Not unless it's in the nature of questions and answers.

MR. CATALDO: Very well.

THE COURT: I will ask you the question if you want me to.

MR. CATALDO: Go ahead, sir.

THE COURT: This may be self-serving, but, nevertheless, did you report all of your income for 1963?

MR. CATALDO: Yes, sir.

THE COURT: You may cross.

BY MR. REILLY:

Q How much professional income did you report in 1963?

A The item in the statement is $29,572. The auditors went over my books three times and you went over my books four or five times.

THE COURT: Strike that last statement.

MR. CATALDO: You didn't show anything different.

THE COURT: How much was your total claimed deduction, by the way, for '63?

MR. CATALDO: I'm coming to that, too.

THE COURT: Give it to me. How much was it for business expense?

MR. CATALDO: Yes, sir. In the return the total receipts were reported as $29,750.58.

THE COURT: And the total expenses?

MR. CATALDO: The total expenses were claimed at $25,246.75.

THE COURT: And that was only in connection with your occupation as a lawyer; is that so?

MR. CATALDO: Yes, sir.

THE COURT: All right.

What else?

MR. CATALDO: As I say, they did not change that in the deficiency. Since then I have on several occasions made up a list of the expenses about which I would absolutely want to be considered business expense.

THE COURT: Wait a minute. I understand what you want to do.

You, in effect, are desirous of amending your return.

What about that at this point, Mr. Reilly? Is there any motion made?

MR. REILLY: To amend his return? I haven't made any motion. I have heard none.

THE COURT: Isn't this a little late?

MR. CATALDO: I'm not amending my return.

THE COURT: What is it you want to do?

MR. CATALDO: Yes, sir. I filed with this Court two statements, copies of which I served on my adversary, which reflected all of the deductions that I wanted to have taken against that $29,000.

THE COURT: Let me stop you right there.

Do they include items which we have not considered here?

MR. CATALDO: Yes, sir.

THE COURT: What kind--

MR. CATALDO: I --

THE COURT: Listen to me. I am trying to get some idea of what you are after.

How much is that? What is the total of these additional expenses you now assert?

MR. CATALDO: I'm sorry. I don't have the total right now. I don't have the total. I will total it. It is several items.

THE COURT: The problem now arises, is this permissible, Mr. Reilly? You will have to take a position and state your reasons.

MR. CATALDO: May I further argue a little bit more on my --

THE COURT: I am going to ask him first and then you may reply to him.

MR. CATALDO: Please allow me to reply.

THE COURT: I will. This is rather late to do this, unless there's been some notice to amend.

MR. CATALDO: No, sir.

THE COURT: There's been no notice to amend? Mr. Cataldo, there's been no notice to amend anything, pleadings or anything else; is that so?

MR. CATALDO: It's not a question of amending the return so much --

THE COURT: You answer my question.

MR. CATALDO: I will make a motion --

THE COURT: You did not move.

MR. CATALDO: I will move--

THE COURT: No. I said you didn't move.

MR. CATALDO: This was in an effort --

THE COURT: That is what I must assume.

Let Mr. Reilly speak now.

MR. REILLY: Your Honor, on the record to date I cannot answer this motion to amend. I haven't seen anything worth amending. Let us establish where we are so far.

THE COURT: So far we have gone over all of these items which were disallowed by the government, and we have passed on them. That is the situation. I am still trying to finish up with any proof from the plaintiff here. That's it.

I assume that you are going to file a list of the items that you agree to withdraw?

MR. REILLY: This is a complete list, Defendant's Exhibit A for identification, of the items so far claimed by Mr. Cataldo.

Defendant's Exhibit B is a listing of those items which are contested.

THE COURT: Where is the list of those which are allowed?

MR. REILLY: The result is, your Honor, --

THE COURT: Yes, I know. I am not going to do that. You will have to do that. You will prepare and submit and send a copy to counsel of the items which you say you have agreed to withdraw any opposition to.

MR. REILLY:: We agree to do that, your Honor. Every item that is not circled is admitted.

THE COURT: All I am asking you to do is give that list.

MR. REILLY: You have it.

THE COURT: I am not going to check this. I am going to ask you to do it. It is part of your business.

After this case is fully closed I am going to ask you to submit proposed findings. Those, by the way, are some of the findings which I have to pass upon and insert in my opinion and so forth.

Do you understand me now?

MR. REILLY: I understand, your Honor. I am suggesting --

THE COURT: I am not going to do this work which is your work.

MR. REILLY: The work has been done.

THE COURT: I beg to differ with you. At least as I understand it, and maybe I am wrong -- is there any place here where you have stated the items which you concede?

MR. REILLY: Yes, your Honor.

THE COURT: Where?

MR. REILLY: Defendant's Exhibit A. Every item which is not circled has been admitted by the government.

THE COURT: I want a list. You can have a list typed out.

MR. REILLY: It's a nine-page list, your Honor. It's somewhat arduous.

THE COURT: It may be arduous. This is what you get into when you have a case like this. If I am going to make findings, I am not going to make a list like this. Any stenographer can do it.

What is this that you want?

MR. CATALDO: I want to mark these for identification.

THE COURT: What is this?

MR. CATALDO: These are the two lists I filed with your Honor--

THE COURT: I am not taking what has been filed as evidence.

MR. CATALDO: You haven't referred to them. I want them in the record.

THE COURT: There is no reason why I should refer to them.

MR. CATALDO: There is reason for referring to them because they contain a complete list of the claimed expenses --

THE COURT: Look, will you listen to me.

MR. CATALDO: Yes, sir.

THE COURT: I am ruling now that I have no occasion to take judicial notice or any other notice for the purposes of this case as to any papers which you filed. If you want to produce some proof, go ahead.

MR. CATALDO: Yes, sir.

THE COURT: Do you understand me?

MR. CATALDO: Yes, sir.

May I offer these two lists?

THE COURT: Have them marked for identification.

MR. CATALDO: Yes, sir.

xxx (Plaintiffs' Exhibits 24 and 25 marked for identification.)

THE COURT: Show it to counsel. See if he objects.

MR. REILLY: I would like to voir dire on 24?

THE COURT: All right.

BY MR. REILLY:

Q Mr. Cataldo, is 24 for identification a duplicate of the list which you filed with the Court yesterday called

Statement?

A It's a list which I served on you and which I filed with the Court. It was done purposely so that the Court could have by numbers all of the items --

THE COURT: Just answer the question.

Q It's called List of Claimed Expenditures; is that what that is?

A That's right.

Q 24 for identification?

A That's right.

Q Did you have occasion earlier in this case to submit at a pretrial conference a similar list?

A This --

THE COURT: Just yes or no, please.

A Somewhat similar, but not exactly.

Q Can you state what the differences are?

A Yes, sir.

Q What are they?

A On March 13th I submitted a list of claimed expenses and you were supposed to pursuant to the direction of the Court -- you were supposed to indicate thereon the disallowances that you would claim, and you did. I offer that into evidence.

Q Please answer the question. What are the differences between --

A I made up the same list again for the purposes of this trial with a number prefixed to each item so we could refer to the number rather than to date. It would make it a lot easier to understand.

THE COURT: Let me ask you a question, if I may. Let me see that proffered paper first. This is 24 for identification before me.

Is this list the same insubstance as the items which we have gone over, plus the items which counsel for the United States has allowed under the paper which he submitted?

MR. CATALDO: I didn't see his paper. I can't answer that question.

THE COURT: There you are, counsellor.

This list, 24 for identification, does it include the items which we have passed upon here in court the last days?

MR. CATALDO: Those items are included in that list.

THE COURT: There is no indication then as to which are new items on this list?

MR. CATALDO: Yes, sir.

THE COURT: Where is that?

MR. CATALDO: There are 399 items. They are numbered from 1 to 399.

THE COURT: But which ones, if any, of these are new items? How are they designated?

MR. CATALDO: They are designated by the other sheet of paper.

THE COURT: What do you mean by the other sheet of paper?

MR. CATALDO: Number 25.

THE COURT: This is 25 for identification. What is 25 for identification?

MR. CATALDO: Yes, sir. They contain --

THE COURT: It contains what?

MR. CATALDO: It contains a list of the same items withthe government's admissions and its disallowances.

THE COURT: All right. Sit down.

I want to ask Mr. Reilly a question. This thing is rather complicated, if I may say so, Mr. Reilly.

Have you included on that exhibit,which you stated indicated what position you were taking --

MR. REILLY: This is a Xerox copy of it, your Honor.

THE COURT: This is Exhibit A.

MR. REILLY: Exhibit A is a Xerox copy.

THE COURT: Are any of these items on that list, whether the number is circled or not, new items which weren't included in the original return?

MR. REILLY: As far as I know, there are no new items.

THE COURT: No new ones?

MR. REILLY: No new items.

THE COURT: Where, if anywhere, if you know it, are there any papers submitted by the taxpayers here to indicate what new items are being claimed?

MR. REILLY: The only new claim, your Honor, is in the last paragraph of --

THE COURT: Of what?

MR. REILLY: Of Defendant's Exhibit A. If you turn to the last page of that, your Honor.

THE COURT: What does that show?

MR. REILLY: There's a paragraph, statement, that merely says the taxpayers had petty cash disbursements of $3,823.78 for which he claims deduction. There's no listing at all. We haven't heard any evidence in this court yet. That's the only additional factor that so far hasn't been before this court.

THE COURT: I don't know what you are after and how you are asking for it, Mr. Cataldo.

Can you say something succinctly and brief about what it is?

MR. CATALDO: Yes, sir. This gives you --

THE COURT: What does?

MR. CATALDO: These two papers.

THE COURT: 24 and 25?

MR. CATALDO: Yes, sir.

THE COURT: Of what, a picture of what?

MR. CATALDO: Of the items claimed as business expenses, total items claimed as business expenses, plus the action of the government taken on each item, whether they were totally admitted, whether they were admitted at one point or another or whether they were disallowed, and also the government took positions on these items on six different occasions. The last occasion was in the memorandum of law--

THE COURT: What I want to know, and you haven't yet answered, is: Is there any place there where you have stated claims for deduction which were not stated in the return? Let me see your return. Is the return itemized, Mr. Reilly, or not itemized?

MR. CATALDO: Some --

THE COURT: Wait a minute. I am asking him a question. Will you please keep quiet.

MR. REILLY: It's not itemized, your Honor. It's broken down into ten categories and a figure for each category is given. That's all. There's no way to compare the two.

THE COURT: Mr. Cataldo, what you are asking for, and I am uncertain as to whether you are, is any amendment with respect to items which were not connected with the general divisions alleged in your return? I don't know whether you understand that.

MR. CATALDO: I think I do. Let me repeat it to you and see if I understand it.

You are asking me to state whether this list of expenses should be presented in a manner of amending the return so as to show --

THE COURT: Is there any application with respect to that that I can pass on? Either the return should be amended or possibly the contentions of the complaint. I don't know whether it is permissible. I will pass on it only after counsel have submitted a memorandum.

MR. CATALDO: Perhaps --

THE COURT: What do you want to do in this action, if anything?

MR. CATALDO: Right now I want to have those marked in evidence. That is all. That is my application.

THE COURT: That's useless. I am not taking those in evidence. If you want to move to amend the complaint and if you will specify how, I suppose I have got to listen.

MR. CATALDO: Yes, sir. I am making a motion to amend the complaint or the return, whichever in the Court's opinion --

THE COURT: You ask for what you want and I will say whether it can be done or not.

MR. CATALDO: I will make it in the and/or situation. Either the complaint or the return may be amended to show --

THE COURT: To show additional deductions?

MR. CATALDO: Deductions claimed are those deductions which are listed in 24.

THE COURT: I will tell you what I am going to do. You may be seated.

I am going to rule that on or before next Thursday, whatever date that is, the 17th, if you wish to make any amendment, you submit the proposed amended complaint with whatever you say, and a schedule attached to it what you propose. I am going to ask counsel to submit on or before Wednesday, if you can -- you will know what is forthcoming -- a memorandum as to whether that is permissible. It seems to me it's a rather belated application.

What do you say?

MR. REILLY: I am in complete ignorance as to--

THE COURT: Counsel, he is moving to amend it. Don't you understand?

MR. REILLY: He has not indicated, your Honor, what he wants to amend.

THE COURT: He is going to have to do it by Thursday. That is to be served on you and filed with me.

MR. REILLY: Your Honor, I suggest that this amendment proposition is completely irrelevant.

THE COURT: All right. Prepare a short memorandum on it or state now your objections. Don't you understand the liberality in the federal court? I don't know whether it is permissible, but you are faced with that.

MR. REILLY: I respectfully submit --

THE COURT: Wait a minute. I had some case. It sounds like Seaman or some such name as that, in which the Court of Appeals spoke on this question. I will get it for you. You have got to come to grips with this question.

MR. REILLY: The question isn't before us, your

Honor.

THE COURT: Yes, it is before us or will be when he submits what he proposes. Don't dilly-dally with it.

MR. REILLY: I respectfully would like to make a statement.

If Mr. Cataldo wanted to offer these particular items, which are arguments, and he asked to amend the complaint, it was an erroneous statement. He has no intention to amend this complaint.

THE COURT: That's silly. He hasmoved. You haven't grasped this.

What I am going to do now is to ask you to put on any defendant's proof you have in this unamended situation.

MR. REILLY: I have to be clear whether -- has Mr. Cataldo finished the presentation of his case?

THE COURT: I assume he has.

MR. CATALDO: No, I have not.

THE COURT: What else? You have got certain concessions.

What proof do you want to submit?

MR. CATALDO: I am waiting for him to finish his statement. That was all.

THE COURT: That relates solely to this prospective motion to amend. If the amendment is granted, we will have to have a further hearing on the facts relating to the amendment.

Have you any other proof, not about the proposed amendment, but about the other? You haven't, I take it.

MR. CATALDO: Yes, sir, there is.

THE COURT: What is it?

MR. CATALDO: I have further proof.

THE COURT: What is it?

MR. CATALDO: On the $867.67-item I want to offer --

THE COURT: Wait a minute. Where is that, please? What is the date?

MR. CATALDO: The date?

THE COURT: Yes. We concluded the proof on all of these items, counsellor. I am not going to open it up unless there's some sound reason for it.

Here it is, 6/26, National Surety Company. What is the proof? Are you going to testify or what?

MR. CATALDO: I'm going to testify.

THE COURT: Is this in addition to what you said before?

MR. CATALDO: Yes, sir.

THE COURT: What is the evidence? What is the fact that you want to add?

MR. CATALDO: I sued Ove Gustavsson Contracting Company, Inc., who was the principal on the three bonds where I paid the National Surety $867.67 in 1963 to recover what that corporation owed me for fees and for disbursements incurred for their account. I testified--

THE COURT: Never mind what you testified to before. This isn't going to be a review.

MR. CATALDO: In that litigation I proved that for the Gustavsson account I had paid out in the litigation involving National Surety Corporation a total of $1,456.50, and included in that $1,456.50 was $867.67. I never got paid either then in '63 or subsequently at any time.

THE COURT: Haven't you testified to that before?

MR. CATALDO: I beg your pardon?

THE COURT: Haven't you so testified before on that?

MR. CATALDO: No, I didn't testify about this.

THE COURT: Finish up what you say are facts, if any, further facts.

MR. CATALDO: I respectfully submit to your Honor that when I paid this as a guarantor on those bonds in 1963, that I incurred the obligation in 1963.

THE COURT: All right.

Any argument about it is going to be deferred. Are you through with your facts?

MR. CATALDO: No.

THE COURT: What other facts are there?

MR. CATALDO: The attorney for the government asked me a question as to whether this $867 did not come out of a $16,000-check.

THE COURT: This is argument.

MR. CATALDO: I said no. At least I didn't get a chance to say no. I should have said no.

I do hereby herewith now say no, that I merely said at that time that the $16,000 belonged to a different corporation than this one. This $867 was an item that was paid by me and never recouped.

THE COURT: Now we are through on facts, right?

MR. CATALDO: Yes, sir.

THE COURT: Stick to it, will you?

What I am going to do is this, Mr. Reilly: If you, Mr. Cataldo, want me to review this item I will do so provided that I have the record of the direct testimony that you gave yesterday and what you have said today from the reporter within a reasonable early time.

MR. CATALDO: May I put a question to the Court?

THE COURT: What?

MR. CATALDO: I have testified what the total expense on that litigation was --

THE COURT: Wait a minute, please. I thought you said you had finished on facts. Are you going back to facts?

MR. CATALDO: I was only going to ask your Honor if you would prefer to have the affidavit stating that fact before the Court? I will offer the affidavit.

THE COURT: I don't prefer it. Let it be marked for identification and give it to counsel and see if he will take it in lieu of the transcript of the testimony as a statement to which you would testify if called again.

MR. REILLY: It can be taken in supplement to but not in place of.

THE COURT: I will take it, but you must have the transcript. I can't decide the case unless I have it.

Do you understand?

MR. CATALDO: Yes, sir.

THE COURT: He is conceding that it may be admitted as a supplement to your testimony, and submit it with the transcript.

(Plaintiffs' Exhibit 26 marked for identification.)

x

THE COURT: I take it you are resting your case;

yes or no?

MR. CATALDO: No. I have two other items I want to talk to your Honor about.

THE COURT: State what the items are.

I am taking this item of $867 of the Surety Company as a matter of application to redecide it. I may not grant it. I may not decide it otherwise.

(Plaintiffs' Exhibit 26 for identification received in evidence.)

THE COURT: What are the two items?

MR. CATALDO: The next item is the $255-item of June 25th to Raines & Gutman.

THE COURT: Raines & Gutman?

MR. CATALDO: Yes.. That was the check--

THE COURT: Yes, you testified about it.

Is there any further factual statement you want to make now?

MR. CATALDO: Yes, sir.

THE COURT: What is it?

MR. CATALDO: One is the fact that I made that payment in 1963 as a matter in the ordinary course of my business for this particular client. I don't make a habit of extending money to a client. I had to keep him out of judgments and I did it purposely because I wanted to keep him in business because I thought he would make a good client if I kept him clean of judgments. He had to have a clean record to qualify for surety bonds. That was the purpose of my paying off this judgment. It was for my own benefit, not for his benefit. It was in the course of my business, not for his. I treated it as though it was a case --

THE COURT: This isn't anything new.

MR. CATALDO: There's one more thing.

THE COURT: Are you through now?

MR. CATALDO: No, no.

THE COURT: What you are doing is just giving me sort of a resume at most of what you have already said. Don't you see?

MR. CATALDO: I didn't think I had stated it was a business expense.

THE COURT: Yes, you did.

MR. CATALDO: I stated it is a business expense. Also I was cross-examined by counsel about this item and whether it was included in the $16,000-item. That $16,000-item has been the subject of litigation in the Supreme Court of Albany County for many, many years and the government was a party to that litigation. The fact that I paid out of that $16,000 was litigated, that question. The government has got as much information about those facts as I have.

THE COURT: Yes,, but it has to be submitted here. You cannot, and let me make this clear, come into court and say that the government has certain information. You must present it before me.

Are you through now?

MR. CATALDO: No.

THE COURT: Finish up. It's just a rehashing of the other.

MR. CATALDO: You cut my point off.

The point is that the only evidence that seemed to question what I was saying was a question made by counsel as to whether or not this item was not included in it. What I am saying, the government knows very well it was not included and that the question was improper. Since your Honor had cast -- since it cast doubt upon my credibility on the question, I would like to have the credibility restored and the doubt removed.

39 The government is not playing fair. When they have the evidence, they should come forward with the proper evidence, not make me feel like a fool before a judge of your standing. I have been before your Honor before and I don't think your Honor found me to lie in any respects.

THE COURT: I am not passing on your credibility except as to certain items.

Are you through on that?

MR. CATALDO: I'm through on that item; yes, sir.

THE COURT: I am reconsidering this item. I have considered whatever has been stated now by counsel. I must adhere to my original determination.

I want to say this for the record and for the benefit of the plaintiff: The burden of proof here is on the plaintiff. That means, in substance, that the government doesn't necessarily have to prove anything here in this trial before me. That means essentially that the government is not required to disprove anything which the plaintiff says. The burden in this case means that the taxpayer must show. I adhere to my determination.

Do you have another item?

MR. CATALDO: Yes, sir.

THE COURT: What is the second item?

MR. CATALDO: I was not heretofore permitted to make a statement of how I operate my business.

THE COURT: I am not going to listen to that. I know how attorneys operate their business. I think I can take judicial notice of it. You may have done it in an unusual way.

MR. CATALDO: I don't know that that is so. All the lawyers --

THE COURT:: You did if you reported as income some things which really were not income or expenditures which were not necessarily deductible.

MR. CATALDO: Judge, that's just the point.

THE COURT: What do you want to say?

MR. CATALDO: I am a practicing lawyer.

THE COURT: I know you are. Wait a minute. I want you to pause a minute so I can know where we are going. I will let you state generally in brief what you did. I don't know that it is going to in any way affect my previous determinations. If it does, I will say so.

MR. CATALDO: Yes, sir.

THE COURT: What is it you want to say? This is fact.

MR. CATALDO: Should I put it in question and answer form or just answer your question?

THE COURT: You may state how you conducted your business generally and relate it to your records, if you wish.

MR. CATALDO: Yes, sir.

I have been a sole practitioner in downtown --

THE COURT: Yes, a whole lot of people have.

MR. CATALDO: I have only done with respect to solicitation of people what everybody else does.

THE COURT: That is not material here.

MR. CATALDO: In the course of my solicitation of business I have joined the Men's Club, I have had my wife join the Women's Club. I have joined the West Side Tennis Club. I had to join the West Side Tennis Club to get anywhere in the neighborhood, get any neighborhood business. I couldn't have gotten as much neighborhood business as I did get, as I now have, if I hadn't joined the club. I do not play tennis. I haven't ever played tennis.

THE COURT: Stick to facts.

MR. CATALDO: I am. This is a fact.

THE COURT: I don't think you are.

MR. CATALDO: My purpose in joining the West Side Tennis Club --

THE COURT: I have listened to that. I have listened to that.

MR.CATALDO: That was to solicit business and we did. The same thing is true with the Atlantic Beach Club. I got a --

THE COURT: You have talked about that time and time again yesterday. I am not going to listen to that.

MR. CATALDO: No. The dues which are under 274 are allowable in both those instances if I use those clubs more for business than I do for social or personal use. Both clubs are used more for business than for social. You've got to remember that in the Atlantic Beach Club situation --

THE COURT: Listen, what you are saying now is out of order. You are repeating what you said several times. Will you stick to what you are trying to tell me about.

MR. CATALDO: I'm interesting in proving the deductibility of both the dues and the expenditures. So that I say I sought these things out for business purposes, purely business purposes.

THE COURT: Did you solicit clients?

MR. CATALDO: In a way I did. Not unlawfully. I did it lawfully.

THE COURT: How did you solicit, generally?

MR. CATALDO: By exposing myself to them and exposing my legal ideas, buying them dinner and this sort of thing.

THE COURT: All right, I understand.

What else do you want to say relative to how you did business? I think you have covered it.

MR. CATALDO: All right. Now --

THE COURT: What do you have to say that is in addition or an expansion of this? You have covered the ground very thickly.

MR. CATALDO: In connection with an item in the West Side Tennis Club --

THE COURT: I don't want to go over items. You have testified on items. I am not going back and opening up the case for that purpose.

What do you have to tell me about the way in which you did business? I think I can take somewhat judicial notice of how lawyers conduct their practice. I practiced law for thirty years.

MR. CATALDO: The only thing I wanted to state, and I'm finished, is the statement of the way I solicited business. This is what I wanted to impress upon your Honor.

THE COURT: All right. It has been impressed upon me.

MR. CATALDO: The question of whether I write a complaint this way or that way -- I'm not talking about that, nor am I talking about how I brief cases or try cases.

THE COURT: I understand what you are attempting to talk about. I think you covered it.

MR. CATALDO: Thank you.

THE COURT: That is all then?

MR. CATALDO: Yes.

THE COURT: Will you sit down.

MR. CATALDO: One more thing, please.

THE COURT: One more thing? Wait a minute. counsellor. Please sit down. I am going to allow cross-examination, if any, about this last area that you have attempted to cover and have done so rather completely.

Any questions about this generality method here?

MR. REILLY: Sir?

THE COURT: Any questions as to this last area?

MR. REILLY: Yes.

BY MR. REILLY:

Q Mr. Cataldo, is it your contention that you are practicing law 24 hours a day?

A Yes, sir, excepting when I am fast asleep. Even then I dream of it.

Q When you have contact with people, no matter what setting it is, it's potential business, potential client relationship?

A I don't understand the question.

Q Do you have social friends?

A Not that I see -- not that I see, nor that I have reported as expense. If I paid anything that was personal, I have not reported it.

MR. REILLY: I move to strike the answer.

THE COURT: Strike out the answer.

Q The question is: Do you have personal social friends?

MR. CATALDO: I move to strike that out as irrelevant.

THE COURT: This is a question. I overrule any apparent objection.

MR. CATALDO: I'll make a note of it so I can reask myself the question.

A I have personal friends, but I don't see them at all unless I accidentally -- all my personal friends that I knew as a youth -- in the last twenty years I have been doing nothing but soliciting business and making new acquaintances. My present acquaintances are people who I have been soliciting for business and I do it. I can give you names. I see them and see them and I want to see them because they are in a position to give me business.

THE COURT: All right, you have answered enough.

MR. REILLY: No further questions.

THE COURT: All right.

MR. CATALDO: In that light, all the expenses of which you have a record of in these checks now are related to the very people whom I have sought business from. There isn't an exception among them at all.

THE COURT: All right, you have stated that. You said you had some other item that you wanted to testify about.

MR. CATALDO: Yes, sir.

THE COURT: Tell me what it is.

MR. CATALDO: Yes, sir.

THE COURT: We have completed everything but this one item.

MR. CATALDO: My wife had a diary.

THE COURT: What?

MR. CATALDO: My wife had a diary of events.

THE COURT: Is it here?

MR. CATALDO: Here are notations which will refresh my recollection that on July --

THE COURT: As to what?

MR. CATALDO: As to the check which you disallowed at the Atlantic Beach Club for $76 because we didn't have the names of the people.

THE COURT: You had an opportunity to submit this before. You didn't submit it, did you?

MR. CATALDO: I didn't know that she had this diary.

THE COURT: All right. Youhave talked to your wife overnight, I suppose.

Which item is this?

MR. CATALDO: $103 was the check.

THE COURT: What is the date? How much, $103?

MR. CATALDO: Yes, sir.

THE COURT: 7/24. After you have examined your wife's diary and possibly refreshed your recollection, what do you wish to testify to?

MR. CATALDO: The names of the parties that were at that dinner and, by the way, there's an additional check added to it which was not mentioned --

THE COURT: It isn't added yet as far as I know.

MR. CATALDO: I will get it out and read it all over.

THE COURT: You are not going to read it all over.

MR. CATALDO: The names of the parties at that dinner were of the Italian Line, Mr. and Mrs. Charles Everrett, Mr.and Mrs. Joe Gambetessa. He is the New York manager of the Banco de Homa. They were clients of mine. I handled their lease when they moved into 44 Wall Street. Also we were there. Also a Pauline and Dominick Maschiacchi.

He was an officer of the Banco Commerciale.

The occasion was that Dave was just made assistant to the passenger department, management of the passenger department of the Italian Line. At the club they had an occasion that they called Loch Lomond Night.

THE COURT: Loch Lomond?

MR. CATALDO: Yes.

THE COURT: That's Scotch, not Italian.

MR.CATALDO: They all came down and the Everretts joined us.

THE COURT: Is that all you want on that?

MR. CATALDO: Let me get the check and I'll tell you exactly how much that was.

THE COURT: I thought that was put into evidence. Weren't they?

MR. CATALDO: There was $18 for the bar and $76 for the dinners.

THE COURT: Is that all now, all your evidence on facts? This diary sheet, let it be marked for identification.

Are the names there that you mentioned?

MR. CATALDO: Yes.

THE COURT: Are they in your handwriting or your wife's?

MR. CATALDO: My wife's handwriting.

THE COURT: Let it be marked for identification.

(Plaintiffs' Exhibit 27 marked for identification.)

MR. CATALDO: I don't think they ought to go through my wife's diary. I didn't go through it.

THE COURT: He has a right to look at that page. That is the only page at which he should look.

If there is anything else on that page you want to refrain, say so, block it out or something.

Are there names there?

MR. REILLY: There are names there.

THE COURT: Let me see it.

You have testified that this refreshed your recollection?

MR. CATALDO: Yes, sir.

THE COURT: That is about all it is. All right, it is not offered.

You are through now on that, are you, sir? You are through now on facts?

MR. CATALDO: There's another item of $43 on the West Side Tennis Club where my --

THE COURT: No, on this item.

MR. CATALDO: Yes.

THE COURT: We don't jump all around. All right, sit down, sir.

Any cross-examination here on this new evidence?

MR. REILLY: Yes.

BY MR. REILLY:

Q Mr. Cataldo, for what purpose did your wife keep a diary?

THE COURT: If he knows.

Q If you know.

A I don't know. I didn't ask her.

THE COURT: He can't tell probably.

MR. REILLY: No further questions.

We ask that your ruling stand. It's not his business entry; it's his wife's social entry.

THE COURT: All it is is a refreshing of his recollection. The wife isn't here to testify that these persons were there. The question is: Does his recollection refreshed from this source stating that these persons were there suffice under the rule? What do you say to that?

MR. REILLY: The answer is in order to claim an entertainment deduction, it is not enough to recall what transpired several years ago. You must have contemporaneous business records setting forth the persons who are entertained, the business purpose involved and the relationship of the client to the taxpayer. Mr. Cataldo has failed to meet those requirements.

Anybody could come in and say, Yes, I was there with Joh Doe and everybody else. The government has no aay of contesting the credibility of the witness.

THE COURT: He says in general --

MR. CATALDO: This --

THE COURT: Will you please keep quiet when I am talking. Have you no courtesy for the Court? It's not because I am the judge. What it means is, I suppose, that he has not stated that this occasion was for the discussion of any legal business, just for general good will, isn't it?

MR. REILLY: Yes. That would be an additional ground for disallowing it.

THE COURT: I adhere to my original decision. That is the last item you have.

I assume, therefore, that you now rest. There's nothing else to present, I take it.

MR. CATALDO: I have another similar item for $43, West Side Tennis Club.

THE COURT: I am not going into all these past items unless there's something you say you overlooked or you got additional evidence. There's no reason why I should. This will go on indefinitely.

MR.CATALDO: No, sir.

THE COURT: What else is there?

MR. CATALDO: I offered this one item and I offered the other item, too.

THE COURT: What item? What exhibit?

MR. CATALDO: West Side Tennis Club. My wife entertained eleven people.

THE COURT: Let's get the item first. What is the date?

MR. CATALDO: The date of the entertainment is July 24th and the item is $43 that I paid in August.

THE COURT: Atlantic Beach Club?

MR. CATALDO: West Side Tennis Club.

THE COURT: Is it August 8th?

MR. REILLY: Probably September 3rd, your Honor.

THE COURT: 9/3? Will you tell me where it is. I can't find it.

MR. CATALDO: 10/8.

THE COURT: 10/8, $39.90.

What new evidence is there about this?

MR. CATALDO: The names of the parties that my wife entertained on July 24th, which that bill --

THE COURT: You refreshed your recollection from something?

MR. CATALDO: Yes.

THE COURT: Let it be marked for identification.

MR. CATALDO: Yes, sir. My --

THE COURT: Let it be marked for identification.

(Plaintiffs' Exhibit 28 marked for identification.)

MR. CATALDO: My wife and I discussed this question --

THE COURT: Never mind whether your wife and you discussed it. Testify as your recollection has been refreshed. That is the only way you can do it.

MR. CATALDO: Yes, sir. My recollection has been refreshed of this event. It's to the following effect, that I agreed to assume the expense of this party which my wife wanted to run for these people.

THE COURT: Who were they, according to your recollection as refreshed? State the names.

MR. CATALDO: One is Anne Wolf. Some of them didn't show up.

THE COURT: You can't count those.

MR. CATALDO: Those that were there, Anne Wolf, Ethel McLane, Elsie Sauer, Alice Welsh. I can't make out one name. Myrtle Trunk and Gussie Burklan and Alice Gitlan and Dorothy Tastrom.

THE COURT: Who are these people? Were they all clients, counsellor?

MR. CATALDO: I have done work for six people. I have done work for them, yes, sir. Alice Welsh, I got a fee of $4,100.

THE COURT: After that or before?

MR. CATALDO: I beg your pardon?

THE COURT: Was it after the dinner or before the dinner?

MR. CATALDO: After the dinner.

THE COURT: How long after?

MR. CATALDO: I guess about two years afterwards.

THE COURT: Anything else you want to say, facts?

MR. CATALDO: All these people were people from whom I was getting business or I expected to get business from, and we agreed and I agreed to assume that as an expense of my operating my office.

THE COURT: With whom did you make the agreement?

MR. CATALDO: I beg your pardon?

THE COURT: With whom did you make that agreement?

MR. CATALDO: With my wife.

THE COURT: I see.

What did she do? Did she invite these people?

MR. CATALDO: She invited these people and had them at the West Side Tennis Club.

THE COURT: Which came first, the dinner or the assumption of the expense?

MR. CATALDO: The expense came first. The assumption of the expense came first.

THE COURT: She invited them and then you were asked to assume the expense; is that what happened?

MR. CATALDO: No, no.

THE COURT: You said --

MR. CATALDO: I testified before that we agreed in advance that I would assume this liability.

THE COURT: All right.

Is there any other fact about it? Let's get on. We are going to go to lunch soon.

BY MR. REILLY:

Q Mr. Cataldo, was this expense for a bridge and luncheon?

A No, it was a luncheon. There was bridge mentioned there.

THE COURT: Was there bridge that day with these people attending with your wife?

THE WITNESS: Yes. If they played bridge, they played bridge after luncheon. The cost was the cost of the luncheon.

Q Mr. Cataldo, were you present at this luncheon and bridge?

A No. I agreed that my wife should do it.

MR. REILLY: No further questions.

THE COURT: All right. This is a revival of this other item. I adhere to the disallowance.

I take it you are through?

MR. CATALDO: Yes, sir.

THE COURT: All right. Plaintiffs rest.

Are you going to put on any testimony or proof?

MR. REILLY: The government is not going to put on any evidence or proof. I do wish to make it clear for the record that as of this date the plaintiff has not put on any proof as to petty cash expenditures.

THE COURT: As to petty cash expenditures?

MR. REILLY: That is correct.

THE COURT: Where is that in your memorandum?

MR. CATALDO: I offered that --

THE COURT: I am asking him. You can't hear me and I have to shout.

MR. REILLY: In his memorandum of law he makes reference to the fact --

THE COURT: Where is there any claim for that?

MR. REILLY: It's made in his list of claimed expenditures, which is I believe Plaintiffs' Exhibit 24 or 25 for identification.

THE COURT: Those haven't been amended. I haven't granted any amendment yet.

MR. REILLY I want it to be clear that he hasn't presented any evidence so we don't have any arguments about this at a later date.

THE COURT: I assume he hasn't. If it's a part of the proposed amendments, it will be passed upon. I have already decided that.

MR. CATALDO: I --

THE COURT: Will you please sit down. Nobody asked you to say anything.

42x MR. CATALDO: I want to answer him. May I reply?

THE COURT: There's nothing to reply to.

MR. CATALDO: I think so. I would like to reply.

THE COURT: What is it in short?

MR. CATALDO: The expense item he's talking about is part of the return and it's part of that paper that I just asked to have --

THE COURT: How does it get into the return?

MR. CATALDO: It's been in the return. The only thing he objected to are those items that are in his brief. We have been talking about those items.

THE COURT: We are going to recess at this time and return at 2:15 for what other proceedings there are in this case as it presently stands.

(Recess to 2:15 o'clock p.m.)

AFTERNOON SESSION - 2:15 P.M.

THE COURT: Now, I recessed this noon in order that I might have the record clear at this point and to explain to you again what I require subsequent to today. The case is finished insofar as the present pleadings are concerned. However, I will consider receiving only from Mr. Reilly a memorandum, a legal memorandum only with regard to when this rule requiring certain substantiation of business disbursements went into effect, particularly whether it affected the return for 1963.

Is that clear to you, Mr. Reilly?

MR. REILLY: Yes, your Honor. However, you had asked for this yesterday to be filed today.

THE COURT: If you have it, I will take it now.

MR. REILLY: I have it here. I have served it upon Mr. Cataldo.

THE COURT: Give it to the clerk.

You have submitted yesterday, I understand you to say, at the time of the commencement of the trial, Mr. Cataldo, your contentions with respect to this same matter; is that so?

MR. CATALDO: Yes, it's in my memorandum, sir.

THE COURT: All right. It's in your memorandum.

MR. CATALDO: Of law.

THE COURT: This issue is joined. There are no further papers necessary on that. Do you understand me?

MR. CATALDO: I understand you.

THE COURT: Why don't you say so.

MR. CATALDO: I want to finish my answer. I make certain fact claims in my --

THE COURT: Your fact findings are not to be taken from any memorandum. They are only to be based upon what was submitted in court. You should know that.

How long have you practiced law, a long time?

MR. CATALDO: Forty years.

THE COURT: You certainly should know that.

MR. CATALDO: Just a minute, Judge.

THE COURT: I don't know what you want to say.

MR. CATALDO: I'm trying to tell you the facts upon which I base my claims in the memorandum have not been testified to yet because the question hadn't arisen. I will want to say in support of the fact statements made in the memorandum what those facts are under oath. I will make them in either an answer to your question or my own question.

THE COURT: This is again new. You are struggling along with a rear-end fight here when I have asked you particularly right on this record of whether you were through. I am astounded. It shocks me.

MR. CATALDO: This subject had not been touched before.

THE COURT: Nobody indicated any such thing and it's absurd, frankly. If you weren't your own attorney here, I would just brush it off as just an impossible demand.

Now you say at this late date, after you have finished up, after you had concluded your case, you now tell me that you want to put in some facts which you say are in your memorandum; is that it?

MR. CATALDO: Yes, sir.

THE COURT: Let's look at your memorandum. This is only by special dispensation that I do this.

What page of your memorandum are you talking about? This is most annoying.

Where are there any facts in your memorandum that you want to submit now?

MR. CATALDO: It starts at page 8.

THE COURT: Page 8.

MR. CATALDO: With respect to the petty cash disbursements.

THE COURT: Page 8, where?

MR. CATALDO: Where I discussed the petty cash disbursements of $3,881.60.

THE COURT: Are these contested, Mr. Reilly?

MR. REILLY: Yes, your Honor, they are.

THE COURT: Has there been any proof on these, Mr. Reilly?

MR. REILLY: No proof whatsoever, your Honor.

MR. CATALDO: They have not been contested in the memorandum, your Honor.

THE COURT: They don't have to be contested in a memorandum. You simply amaze me throughout today.

MR. CATALDO: But your Honor limited me to --

THE COURT: I don't limit you to relevant proof. I never have limited you to relevant proof. Now you are talking on this rear-end situation that you want to produce something else.

MR. CATALDO: No, sir.

THE COURT: What proof do you want to produce about these cash disbursements?

MR. CATALDO: I want to produce --

THE COURT: What proof do you want to produce? Do you have a book about it?

MR. CATALDO: I want to produce the proof that I had made a claim of $3,800 --

THE COURT: The proof of the claim doesn't mean it's proved. It is contested, as I understand it.

MR. CATALDO: In the return I have asked for a cash disbursements item.

THE COURT: What is that?

MR. CATALDO: In my return, my tax return, I asked for a cash disbursements item.

THE COURT: What was this, to substantiate it?

MR. CATALDO: Yes, sir. I submitted to the government --

THE COURT: I don't mean later, but at the time of the return.

MR. CATALDO: Yes, sir. I had my diary at the time.

THE COURT: Oh, wait a minute. You don't sense what I am trying to ask you. I am asking you: Did you submit any written proof with your return at that time?

MR. CATALDO: Yes, sir.

THE COURT: What was it?

MR. CATALDO: I submitted my diary.

THE COURT: That wasn't submitted with your return, was it? Did you file your diary with your return?

MR. CATALDO: No, I didn't.

THE COURT: Then what are you talking about? This is just insane almost.

MR. CATALDO: I submitted the profit and loss statement of my operations. In it is an item of $3,800, and the government has not contested that.

THE COURT: That is nonsense.

MR. CATALDO: He just now made the statement. This is the first time on this trial that I know --

THE COURT: Will you please sit down now. I want to ask your adversary a question. Please sit down, calm down. Permit me to ask this without any degree of raising my voice, which I had to do because you didn't hear.

Mr. Reilly, is this item of petty cash still outstanding and has it been contested by the government?

MR. REILLY: Yes, it has been contested. It's still outstanding. As early as pretrial conferences we let him know that.

THE COURT: This may be extreme. I may be leaning over backwards, but I suppose I have got to submit you and myself to this additional possible proof, much as I say that it is unfair to the government, too.

Produce your proof on these petty cash items.

MR. CATALDO: Yes, sir.

THE COURT: What are you going to do first? Do you have any data in writing or records? Just yes or no.

MR. CATALDO: My --

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THE COURT: Just answer yes or no. Can't you say yes or no? Do you have to give some other answer?

MR. CATALDO: I don't know what you are talking about.

THE COURT: I am afraid you don't hear me. I am asking you, and I am shouting this, which I have to do: do you have any written documents, records or proof about these petty cash disbursements?

MR. CATALDO: Yes, sir.

THE COURT: Get them out fast.

Did you keep a petty cash book or journal?

MR. CATALDO: I kept them all in my diary, sir.

THE COURT: All right. Get your diary out for '63 and offer it in evidence.

MR. CATALDO: Here are three pages --

THE COURT: I said get your diary out. I didn't say to offer some scraps of paper.

MR. CATALDO: I lost my diary when I moved in June, 1972. I was in the hospital at the time.

THE COURT: I can't help that. It wasn't my fault.

MR. CATALDO: When I got back in July my stuff was gone. Among it must be my diary. I didn't know it until the eve of trial.

THE COURT: What do you have that is left?

MR. CATALDO: I took off at the time I made my return the items out of my diary which went up to make the petty cash items and these four pages--

THE COURT: All right. Have it marked for identification.

MR. CATALDO: Thank you very much.

(Plaintiffs' Exhibit 29 marked for identification.)

THE COURT: I will question you about it so the record will be clear. I am going to ask you questions.

What is this paper which has been marked Plaintiffs' Exhibit 29 for identification?

MR. CATALDO: That is my work paper from which I worked from the diary. They represent true transcriptions of the entries in the diary representing the petty cash items I had incurred during the year 1963.

THE COURT: But no place on this paper, which has been marked 29 for identification, is there any indication of the purpose, is there?

MR. CATALDO: Not on that paper; no, sir.

THE COURT: Have you got any other paper that has something about the purpose of these alleged expenditures?

MR. CATALDO: In a way I have; yes, sir.

THE COURT: In what way?

MR. CATALDO: I have it in a way that the -- the deficiency notice.

THE COURT: What paper do you have of your own that you want to present, if any?

MR. CATALDO: I have the deficiency notice.

THE COURT: That isn't going to help you.

MR. CATALDO: Which is Exhibit No. 2?

THE COURT: I want some proof. I don't understand your answer.

What do you have that shows --

MR. CATALDO: I --

THE COURT: Will you listen to me.

Are there any papers which you have which show the purposes of all these alleged cash disbursements shown in 29 for identification?

MR. CATALDO: I don't have my diary anymore.. I tried to tell you that?

THE COURT: I have heard about the diary.

MR. CATALDO: All right.

THE COURT: You said you lost it. The question is: What do you have?

MR. CATALDO: I have those notations --

THE COURT: Where are the notations? Can't you tell what you have?

MR. CATALDO: The notations you have in your hand. They represent --

THE COURT: These evidently only are amounts. They don't show the purposes.

MR. CATALDO: Let me tell you that the government has had that paper in its possession. It has had my records, and it came to the conclusion - -

THE COURT: Just stop a minute.

MR. CATALDO: Let me finish.

THE COURT: Will you please stop a moment. Please sit down. It's the only way I can handle you.

Mr. Reilly, does the government have any statements -- this is an unusual situation -- which were received from this taxpayer which show the purposes of these disbursements which appear to be alleged in this --

MR. REILLY: No.

THE COURT: Then what do you have, counsellor?

MR. CATALDO: May I state my facts, please, for the record?

THE COURT: Go ahead, if they are facts and not arguments.

MR. CATALDO: Not arguments.

THE COURT: Go ahead with your facts, counsellor.

MR. CATALDO: I submitted that list both to the auditor and to the appellate division and also to the auditor of Mr. Levine. Each of them had decided that $2,230.23 of those items were allowable and $1,593.55 of those items were not allowable, and they told me each time that $1,593.55 consisted of items of $25 or more in each case. They said that I don't need my justification or any what they call --

THE COURT: I am going to interrupt you and I am going to ask Mr. Levine -- is he here? I am going to ask him to come up.

MR. CATALDO: I am not finished with my statement of facts, sir.

THE COURT: I am going to interrupt you. That is all. You can come back to it if there is anything that is relevant to be added.

Come up here. You are still under oath. I want to ask you a few questions in this unusual situation.

MR. CATALDO: May I be of help to you once more about something else?

THE COURT: Not about something else.

MR. CATALDO: On this item I want to be of help to you.

THE COURT: You are not being any help just now. Maybe you can be later. Just keep quiet now. If you don't like the questions I ask Mr. Levine, you may object.

ROBERT LEVINE, called as a witness by the Court, having previously been duly sworn, was examined and testified as follows:

EXAMINATION

BY THE COURT:

Q Mr. Levine, do you have any record of any purposes for any of these items which the plaintiff claims as petty cash disbursements? I am referring to Exhibit 29 for identification.

A I have no recollection of this, sir.

Q Do you have any records which would show it, show the purposes of any of them?

A No, sir. I retained no records detailing his alleged petty cash.

Q Did you ever have such records of detai?

A I did, your Honor, at one time construct an adding machine tape of a record -- of a taxpayer's record listing amounts where I did, as Mr. Cataldo has indicated, come up with a total of $3600.

Q What did you conclude about that?

A I merely extracted from that adding machine tape those items which were over $25 and said those are disallowed, and I was willing to accept the propriety of those that were below $25.

Q How much did that total, if you recall?

A $2000 figure that Mr. Cataldo had indicated.

Q But you don't have any record of specific purposes of any of the items of $25 or more?

A Yes, sir.

Q You do?

A I do not.

Q All right.

Were you ever given any record of the items of $25 or more?

A To my recollection, your Honor, no.

THE COURT: All right.

Any cross-examination?

MR. CATALDO: Yes, sir.

THE COURT: Go ahead, as long as it's relevant.

Please wait until you see whether there's any objection from Mr. Reilly.

EXAMINATION

BY MR. CATALDO:

Q Did you make notes of your examination of my records, Mr. Levine?

A Yes, sir, I did.

THE COURT: Confine yourself to these disbursements, these petty cash disbursements.

Q Are those records here in court?

THE COURT: What records do you mean?

MR. CATALDO: The records that he made.

THE COURT: As to what?

MR. CATALDO: As to my expenses, including the petty cash expenses.

THE COURT: The only thing we are concerned with now is the petty cash disbursements.

A The record that I made was an adding machine tape of your -- of amounts which you had listed as petty cash.

Q Did you have the diary to check against the items?

A To my recollection, I did not.

Q You say to your recollection.

Do you have any recollection of ever seeing my diary?

A I do not recall, sir. I have no recollection of having seen it.

Q You do not recall?

THE COURT: He said that.

Q Do you recall having an examination before trial here in this court where you came to testify on --

THE COURT: Do you have the deposition?

Q (Continuing) October 17, 1971? Do you have a recollection of it?

A I have a recollection of having given the deposition. I did not have it at hand.

Q Have you been through it to note whether or not you did say that at that time you did have the diary at the examination at my office?

A I haven't seen the deposition in the last year. I do not recall what I had said.

MR. CATALDO: May I have a few minutes recess to find where he testified on the diary in this deposition?

THE COURT: I suppose so.

There will be a short recess.

(Recess.)

THE COURT: Did you find the place in the deposition, Mr. Cataldo?

MR. CATALDO: Yes, sir.

THE COURT: All right, pose a question. Read it from the deposition to the witness and ask him if he so testified.

Give us the page number, for Court and counsel.

MR. CATALDO: Page 21, line 3.

THE COURT: What is the question and answer?

MR. CATALDO: The question is:

"Q Were diaries shown to you as well on this examination?

"A Yes, sir."

THE COURT: Is that all?

MR. CATALDO: This is on the diary; yes, sir.

THE COURT: Of course it is. I said is that all?

MR. CATALDO: Just one minute now.

THE COURT: You didn't hear me again.

MR. CATALDO: At line 19:

"Q Would you say that you had a complete examination, that you made a complete examination of the taxpayer's return for 1963?

"A Yes, sir."

THE COURT: Is that all?

MR. CATALDO: That's all.

THE COURT: Is that all from the diary?

MR. CATALDO: Yes, sir.

THE COURT: All right.

Is that all with the witness?

MR. CATALDO: No, sir.

THE COURT: Continue then.

BY MR. CATALDO:

Q Mr. Levine, did you or did you not make reference in this deposition to the fact that you made a record of your examination?

THE COURT: You will have to show it to him as to where it is in the record, but maybe he can answer it.

Can you answer that question?

A May I see the deposition, sir, that page of the deposition?

THE COURT: He is asking you anywhere, I suppose. It's an improper question.

I would sustain an objection to it if one is raised.

Q Did you or did you not make a record of your examination, Mr. Levine?

THE COURT: That is another question.

A Yes, I made a record of my examination.

Q Is the record here in court today?

A If I may qualify my --

Q No, I asked you a question, please.

THE COURT: You may qualify your answer. You don't have to say yes or no.

A The record that an agent makes of his examination does not necessarily contain every element of evidence or purported evidence that the taxpayer has presented.

To the extent that it was pertinent to my arriving at a proper conclusion, I did make a record.

Q All right.

In making a proper conclusion, did you make any conclusion about the items in the diary which you would allow and which you wouldn't allow?

MR. REILLY: I object, your Honor, as being irrelevant.

THE COURT: Sustained.

Q Did you make any record of the allowed petty cash disbursements of hearing in the diary?

MR. REILLY: That is also objected to.

THE COURT: Specifically. I will allow it if it is directed to specific items.

Did you make any record with respect to specific items over $25? That is the question. That is what it should be, at least.

Did you or didn't you?

THE WITNESS: I had made a notation that there was an adding machine tape of petty cash items, and those items in excess of $25 amounted to the $2200 figure.

THE COURT: All right.

But you didn't make a list of which items they were except the amounts; is that so?

THE WITNESS: That is correct, sir.

THE COURT: Did you have any evidence before you as to what the purposes of those items over $25 were?

THE WITNESS: It was merely -- I accepted the taxpayer's yellow cap paper indicating a heading of petty cash.

THE COURT: I don't think you understood or you didn't answer the question.

Did you have any basis for any record before you as to the purposes of the items above $25?

THE WITNESS: As I recollect, sir, the caption read petty cash, travel and entertainment, and it was merely a listing of amounts.

THE COURT: A group item?

THE WITNESS: To my recollection, your Honor, it was.

THE COURT: All right.

Any other questions now? Any other questions by you, Mr. Reilly?

MR. REILLY: Yes, your Honor.

THE COURT: I will allow Mr. Cataldo first.

Are there any more questions? If there are, please continue.

BY MR. CATALDO:

Q You said you referred to a group of figures.

What --

THE COURT: He didn't say a group of figures, a group of subjects.

Q Wasn't my diary a day-to-day entry of events occurring?

THE COURT: What is that question? Will you read that question. I don't get it.

What is the question?

(Question read.)

THE COURT: I will sustain an objection to that.

MR. REILLY: Objection.

THE COURT: Sustained.

MR. CATALDO: Judge, I have enough trouble trying to keep up with two lawyers. I don't think you should --

THE COURT: I am not going to let anything to into this unless it's reasonably relevant. It's too widespread a situation. You are being granted this opportunity when you had rested.

Proceed.

MR. CATALDO: I was --

THE COURT: Your question --

MR. CATALDO: I object to the remark, Judge.

THE COURT: If you want to talk, go ahead.

I can't outtalk you.

MR. CATALDO: I was actually conned into this position by the way the defendant made its objections known. He made his objections and you limited me to testimony on those items which were objected to. There was no objection to the petty cash item before.

THE COURT: Are you through now with your speech?

MR. CATALDO: Yes, I am through.

THE COURT: Just calm down and go back to the space there. If you want to ask another question, I will listen. It must be something that is relevant.

BY MR. CATALDO:

Q Didn't the diary which you have in front of you, wasn't that made available to you for your purposes of auditing my books?

MR. REILLY: Objection.

THE COURT: Sustained.

MR. CATALDO: I don't understand the nature of the objection, nor do I understand the nature --

THE COURT: I'm sorry. It is that it's irrelevant.

MR. CATALDO: You called the witness, I didn't call the witness.

THE COURT: You don't need to talk to him if you don't want to. You don't need to ask him questions. I asked him questions in an endeavor to help you. You don't recognize that.

I was endavoring to ascertain if he had lists of the $25 or more items. Apparently he doesn't. Now, you complain because I asked him to take the stand.

Will you go on if you have any other questions which may possibly be relevant.

Q On these items of $25 or more, did you check out what the diary said about them?

A I have no recollection of having seen a diary, per se.

THE COURT: I don't think he had, if I may say so, any obligations to prove your claim.

MR. CATALDO: In --

THE COURT: You should have collected that.

MR. CATALDO: I made my diary available to the Government at every --

THE COURT: I am ruling on your question. You go on with him if you want to go on. Otherwise, I am going to excuse this witness.

Q But you had the diary available to you, that's sure, wasn't it?

A No, sir.

Q Didn't you say so on the deposition?

A Upon --

MR. CATALDO: That's all.

THE COURT: Do you have any questions, Mr. Reilly?

MR. REILLY: Yes, your Honor.

EXAMINATION

BY MR. REILLY:

Q Mr. Levine, I am showing you 29 for identification, Plaintiff's Exhibit 29 for identification.

Is that labeled diary at the top?

A It says diary; yes, sir.

Q Did you have this --

MR. CATALDO: Just a minute.

THE COURT: Will you keep quiet unless the question is asked. You interrupted the questioner.

MR. CATALDO: I object to these questions. They are not on any part of what the Court brought him to the stand for.

THE COURT: Overruled. We are trying to get the truth, the facts. I am going to allow it.

Q Is this the diary you had before you when you reviewed Mr. Cataldo's claims for petty cash and --

MR. CATALDO: I object to the leading question, sir.

THE COURT: Overruled.

A This might have been the nature of the diary that I had seen.

Q Mr. Levine --

THE COURT: Just a minute, Mr. Reilly.

You mean that the diary, if you did see it, did not contain purposes, but just amounts?

THE WITNESS: Yes, sir, without dates or descriptions.

THE COURT: All right.

Q You indicated, Mr. Levine, that you did not see documentation for items over $25 on your testimony to Judge Levet; is that correct?

MR. CATALDO: I object to the leading question.

THE COURT: Overruled.

MR. REILLY: It's his witness.

THE COURT: No, it isn't his witness, it's the Court's witness.

As a matter of fact, I was trying to help you, but you don't like to get help.

THE WITNESS: Would the reporter repeat the question, please?

THE COURT: Yes, read it.

(Question read.)

A Yes, it is correct.

Q May I ask the second question:

Did you see any documentation for items under $25?

A No, sir, I did not.

Q You earlier testified also that you saw some legal cap paper in reviewing petty cash expenditures; is that correct?

A Yes, sir.

Q Is that legal cap paper you have before you, 29 for identification?

MR. CATALDO: I object to the leading question, sir.

THE COURT: Overruled.

MR CATALDO: I think it goes way beyond the rules of fairness.

THE COURT: Overruled. Not every leading question is sinful.

A The nature of Mr. Cataldo's method of reporting his expenses --

MR. CATALDO: I object to the answer, not responsive to the question.

THE COURT: Overruled.

A The nature of the taxpayer's reporting his expenses was by recording amounts on yellow cap paper, a separate page being available with a heading for that category of expenses. One of the categories of expenses was petty cash, which resembled this schedule.

Q Is that a yellow cap paper that you have in your hands?

A Yes, sir.

THE COURT: Was there anything on these papers about which you spoke just now to indicate the respective purposes of these expenditures?

THE WITNESS: There were neither descriptions nor dates.

THE COURT: Very well.

MR. REILLY: I have no further questions.

THE COURT: Do you have any further questions now?

MR. CATALDO: Yes.

THE COURT: Proceed, if they are relevant.

BY MR. CATALDO:

Q Did you have the tax return before you when you were examining my books?

A Yes, sir.

Q Wasn't an item of 38,823.78 the item of petty cash, noted in my tax return?

MR. REILLY: I object to the question, your Honor. It doesn't seem to be relevant to anything.

THE COURT: Sustained. The mere assertion --

MR. CATALDO: It's credibility. This gentleman is trying to tell the Court --

THE COURT: It's credibility about a non-essential and non-relevant item. I sustain the objection.

MR. CATALDO: I object to your Honor's characterization of the document. Your Honor seems to forget that I lost a diary and I didn't mean to lose it. I presented it to the Government on many occasions.

THE COURT: If you want to, you can introduce your return in evidence. It's conceded by counsel, I think, that it does assert a total of petty cash.

You will concede that, won't you, Mr Reilly?

MR. REILLY: Yes, your Honor.

THE COURT: Now you have it. It was in.

BY MR. CATALDO:

Q To refresh your recollection, when you had those figures -- do you recall figures like that specifically, Mr. Levine, on your examination?

THE COURT: What figures are we talking about?

MR. CATALDO: Exhibit 29.

A I wouldn't recall the figures, sir. I recall yellow cap paper.

Q Was it that paper or was it what you got from Mr. Lipton, the appellate conferee?

A Would you repeat that question?

THE COURT: I don't think the question is clear.

Q I will.

Didn't you get a copy of that from Mr. Lipton and bring it to my office?

A It is my recollection that I got it from you, sir.

Q I ask you the other question:

Didn't you het a copy of that from Mr. Lipton and bring that to my office?

THE COURT: Don't shout.

MR. CATALDO: He's avoiding my questions.

THE COURT; That doesn't mean that you start to shout. He isn't deaf, as far as I know. Calm down.

A I recall that part of the file was photostats of yellow cap paper that I received from Mr. Lipton. I worked either from that or from your original records.

Q All right.

Isn't there a difference between a yellow cap and a diary in your mind?

A Yes, sir, there is.

Q All right.

When you are talking about a diary, you mean a diary, don't you, ordinarily?

A Yes, sir.

Q You can't confuse a diary with a foolscap paper, can you?

THE COURT: That's a nonsensical question. Don't answer it.

Q Do you have Mr. Lipton's copy of that here in court or does your attorney have it in court?.

A Would you pose the question to my attorney?

Q I am asking you, si.

A I don't know.

THE COURT: He can't tell whether the attorney has it. That's nonsense.

Q Ask your attorney if he--

THE COURT: You ask him.

MR. CATALDO: Please produce Mr. Lipton's copy of that document.

MR. REILLY: Your Honor, we will not produce that. It's irrelevant.

THE COURT: Go on.

MR. CATALDO: I would like Mr. Lipton's copy to be produced.

MR. REILLY: Mr. Lipton's note papers? We object to producing it as being irrelevant.

THE COURT: Sustained.

MR. CATALDO: This is on cross-examination, sir.

THE COURT: I don't care what it is on. Whether they were Lipton's copies has nothing to do with whether he had any --

MR. CATALDO: Yes, it has.

THE COURT: Listen, why can't you stop interrupting me. I am trying to be kind to you, but I get no response whatsoever from you. You interrupt, you interrupt and interrupt. If it weren't for your age and 45 years at the bar, I would do something else right now. I am not threatening you at all. I am intending to try to get some decorum and order into this courtroom with respect to your acts and words. I hope you get some significance from it.

Next question.

Q Weren't you required to check out what was petty cash expenses, Mr. Levine?

MR. REILLY: Objection.

THE COURT: Sustained as to form. I don't know what that means.

Q Did you come to make an audit with respect to the petty cash items as well as with the rest of the items noted in the tax return?

A Yes, sir.

Q Did you or did you not regard those yellow pages of figures as figures in support of the petty cash items that were claimed in the return?

MR. REILLY: I object.

THE COURT: Sustained in that form. They may be support of the figures, but they don't support the purpose. You have got to show purpose.

Q Did we discuss the purpose of the petty cash items, Mr. Levine?

THE COURT: I don't know how that is going to get in here, Counselor. I will sustain an objection. I think it's irrelevant as to what he discussed.

If you have figures --

Q Wasn't --

THE COURT: Wait a minute. I want to tell you something, if you will listen for half a second.

Why don't you, if you have it, state the purposes and relate them to the amounts. Unless you do that, I shall have to disallow the amount above the 2000. I don't know what evidence you can get from the witness.

If you have anything that you think is a relevant question, pose it. I don't know what it could be.

MR. CATALDO: The Government allowed the $2200 and they disallowed the $1500 worth.

THE COURT: Don't look gift horses in the mouth. They have allowed you the 2000. Now you complain because they don't allow the rest.

MR. REILLY: The Government contests the entire amount of petty cash deductions.

THE COURT: I thought you allowed the two.

MR. REILLY: No. That much has been clear with Mr. Cataldo in this litigation.

MR. CATALDO: It hasn't been clear.

4 THE COURT: Put in whatever relevant testimony you have. I don't know what other questions of any sensible kind can be asked of this witness.

BY MR. CATALDO:

Q Did you make a report of what you found to Mr. Lipton of the examination you made?

THE COURT: You mean generally or of petty cash?

MR. CATALDO: On petty cash.

THE COURT: Just yes or no.

A Yes, I did.

MR. CATALDO: May I have that copy of that report? May I see that report?

MR. REILLY: The Government refuses to make such an internal memorandum available.

THE COURT: Sustained.

MR. CATALDO: I don't think it behooves the Government to stand on that kind of a ground, sir, at this point.

THE COURT: That is a comment, that's all.

Was there anything in this report with respect to particular specific amounts with respect to the purpose thereof?

THE WITNESS: Are you indicating, sir, the petty cash particularly?

THE COURT: Yes.

Is there anything in the report with fegard to the purposes of the petty cash above $25?

THE WITNESS: I made mention in my report of the statutory limit of $25 and that I was disallowing the amount above the $25.

THE COURT: Why? Was there no proof?

THE WITNESS: There was no proof on any part, either under 25 or above.

THE COURT: All right. Ge through with this man. I am not going to let you go on all over the lot.

MR. CATALDO: I will take the stand then and question myself.

THE COURT: You can take the stand if you like.

You are through?

MR. REILLY: No, I'm not.

THE COURT: All right.

BY MR. REILLY:

Q You mentioned a statutory figure of $25.

What section of the statute is that from?

A Section 274.

Q Does that relate to entertainment expenses?

A Yes, sir.

Q If the claimed petty cash was for office supplies, would Section 274 apply?

A No, sir.

Q I am showing you again page 21 of the deposition.

The question was:

Were diaries shown to you.

Did you understand that question to refer to Mr. Cataldo's lawyer's diary for 1963?

MR. CATALDO: I object to that question, sir.

THE COURT: Overruled.

MR. CATALDO: He's --

THE COURT: Overruled I said. I am not going to stop to debate every ruling on evidence that I make.

A My answer was in respect of an understanding that it was the yellow cap paper.

MR. REILLY: No further questions.

BY MR. CATALDO:

Q Mr. Levine --

THE COURT: Only with respect to the last questions and answers.

Q With respect to 1963, wasn't there a directive by the Commissioner to the effect that the books and records rule of Section 274 would not be applied strictly in 1963 returns?

MR. REILLY: Objection. It has nothing to do, Number 1, with petty cash.

Number 2 --

THE COURT: I will allow it, Mr. Reilly.

A Yes, sir.

THE COURT: What was the rule?

THE WITNESS: 1963 was a transitional year in respect to the application of Section 274.

THE COURT: What do you mean by that?

THE WITNESS: That based upon -- essentially I would say, your Honor, that based on the tenure of a taxpayer's adjacent information, he shall be given the benefit of the doubt in the month of January 1963, but for the remaining eleven months Section 274 shall be strictly applied.

THE COURT: So that the strict enforcement of that, the effectuation of it began with February 1963: is that right?

THE WITNESS: That is my understanding.

THE COURT: All right.

There you are, Counselor.

BY MR. CATALDO:

Q Wasn't the allowance of the operation of the section extended by reason of the regulations for three months, starting with January in 1963 for three months ending March 31st?

A I do not believe so, sir.

Q Was Internal Revenue Cumulative Bulletin 1960 through 1963-2 on this subject of when the length of time during the year when this leniency was to be in force?

MR. REILLY: I object, Your Honor.

THE COURT: What is the objection?

MR. REILLY: The objection is that we don't the Internal Revenue Cumulative Bulletin before us.

Mr. Cataldo is reading from his brief.

THE COURT: All right. If the witness knows, he can say so. If he doesn't know, he can say so.

Are you familiar with that?

THE WITNESS: No, sir, I'm not.

THE COURT: All right.

Q Are you familiar with Revenue Ruling 63-144 which extended the period --

THE COURT: Never mind which extended. Just ask the question.

A No, sir.

THE COURT: All right, Counselor.

What else is there with this man?

MR. CATALDO: That's all.

I want to take the stand now.

THE COURT: In the first place, you are excused.

(Witness excused.)

ANTHONY B. CATALDO resumed.

THE COURT: You needn't come up here. As I said, you will sit there. You will sit as you are acting as the witness. You will confine your statements only to relevant facts as you see them. If there's any objection, counsel may move to strike out irrelevant facts.

What do you want to say about facts? What area are you about to get into?

MR. CATALDO: Petty cash business.

THE COURT: All right.

What do you want to say about petty cash? Please be seated.

MR. CATALDO: I want the exhibit.

THE COURT: What exhibits do you want?

MR. CATALDO: Here it is. I notice this is only marked for identification. May I please have it marked in evidence? It's been used by everybody.

THE COURT: I have forgotten whether there was an objection.

MR. REILLY: I object to it. It's nothing but a listing of figures marked Diary. It can't be evidence of any expenditure for business purposes.

THE COURT: Sustained.

MR. CATALDO: Your Honor, they have used this thing in examination of the witness.

THE COURT: That doesn't make it admissible.

MR. CATALDO: It makes it admissible against them.

THE COURT: What does it show?

MR. CATALDO: It shows that they were able to use it to deny the efficacy of what I'm going to testify to.

THE COURT: It doesn't show purpose. I will admit it if it is merely to show a disbursement, but not as a purpose, Mr.Reilly

MR. REILLY: We do not concede that the disbursements were made, yourHonor. It's just a --

THE COURT: I think you are correct. Sustained. The mere writing of figures on a yellow sheet of paper doesn't mean that it's proof that those figures represent disbursements or even were paid.

MR. CATALDO: It means that if they weregiven the opportunity to --

THE COURT: That's nonsense. I sustained the objection.

Go ahead with any testimony you wish to give with respect to these alleged disbursements. What is it? Facts.

MR. CATALDO: Yes, sir. In my return --

THE COURT: Facts, not what you said in your return.

MR. CATALDO: I claimed $3,582.

THE COURT: I know you do.

MR. CATALDO: All right.

THE COURT: That's not news to me.

MR. CATALDO: I told the government at the time that they were questioning it -- I showed them the diary, and, in fact, they made some tapes from the diary. Mr. Shulman did, the first auditor. He made some tapes from the diary.

THE COURT: Tapes of amounts?

MR. CATALDO: Yes, sir. He took from the diary the tapes and he said that he would allow the 2200-and-some-odd dollars --

MR. REILLY: Move to strike, your Honor, as being not evidentiary.

THE COURT: I grant the motion to strike, if that is what you are saying.

MR. CATALDO: He said that he would disallow $1,532 and he showed me that paper. He retained it, both papers.

Then I went to Mr. Lipton after I had appealed and Mr. Lipton -- I showed Mr. Lipton my work papers and I showed him this list. I have here this list which your Honor marked 29 for identification, and I told him these were petty cash disbursements that I had listed and that they consisted of my carfares, local travel costs, restaurant charges, stuff delivered to the office which had to be paid in cash, stamp charges, costs for postage stamps and things like that.

THE COURT: All right, I will let it stand. It doesn't prove the particular specific claims and amounts.

MR. CATALDO: All these things --

THE COURT: Any other proof, facts?

MR. CATALDO: Yes, sir. The expenses for stamps and for these other things I mentioned at the office, stationery, legal forms that came into the office and the tips we had to pay and sometimes other gratuities were noted in the diary on the day that they occurred and they were accurately mentioned in the diary, entered in the diary. The diary was turned over, and this list, a copy of this list was made by Mr. Lipton as being a list of the disbursements for petty cash expense. The general petty cash was used to designate it, but it was meant for stamps and for all the other things I just mentioned. That was turned over to him. Mr. Levine --

THE COURT: Who?

MR. CATALDO: Mr. Levine, when he came into my office, he came into my office upon my consent. They called me to say that they wanted to check my books once more. I didn't have to give them that latitude, but I had nothing to fear, nothing to hide. I said: Sure, come on down. He did come down. I allowed him. I gave Mr. Levine all my records, including my diary. I showed him where these items were and I did not show him this at all.

THE COURT: What do you mean by "this"?

MR. CATALDO: 29.

THE COURT: For identification?

MR. CATALDO: Yes, sir. He had a copy of this that Mr. Lipton gave him, which was a photocopy of these very pages.

I said: You will find them listed in order. You start with January 3rd, the $12-item. I said, You go down the pages of the diary and you'll find these items in order. I left the subject with him. This is all. These were the petty cash items that were listed there, whether you call them for stamps, for lunch or for a charge at the office, a desk, or whether there were times I would buy some lunch and bring it into the office for the girls. That was in here.

Then I get as a result of the report that Mr. Levine made-- I get the deficiency letter in which they continued to disallow the $1523, because each of those items was $25 or more. They said no substantiation was necessary for items under $25, no substantiation of any kind. So this is my claim for those items of under $25 which do not need substantiation, and the items over $25 I say were listed accurately there and they were expended for the various purposes mentioned for those items.

In addition to that I served upon my adversary a set of interrogatories and they answered the interrogatories--

THE COURT: Was there any claim there that they conceded these items?

MR. CATALDO: Yes, sir.

THE COURT: Read the interrogatory and the answer, if you have it.

MR. CATALDO: I have the answer here.

MR. REILLY: Before he does, your Honor, I move to strike everything after --

THE COURT: I am not going to strike it out. I am going to leave it in and decide it upon whatever facts may be submitted. I will give each alleged statement such weight, however, as it may deserve.

MR. CATALDO: Yes. Here they are.

THE COURT: Read the interrogatories.

MR. CATALDO: Interrogatory No. 3:

"State the name of the recipient, amount and date of payment of each item in the gross amount of"--

THE COURT: This is your interrogatory to the government?

MR. CATALDO: Yes, sir.

THE COURT: Go ahead.

MR. CATALDO: "State the name of the recipient, amount" -- all these were in the diary --

THE COURT: Just read the interrogatory.

MR. CATALDO: "State the name of the recipient, amount and date of payment of each item in the gross amount of $1,593.55 disallowed as petty cash, travel and entertainment."

The answer was --

THE COURT: Is it a list of items? Is it a list of items?

MR. CATALDO: No, sir.

THE COURT: What is the answer then? Is it short?

MR. CATALDO: It's short.

3. "This information can be obtained from a diary presented by plaintiff, Anthony Cataldo, to

the Internal Revenue Service, and afterwards retained by him. The items disallowed, 47 in number, were all those over $25, pursuant to IRC, Section 27 4(d) and regulations thereunder. Total per plaintiff's diary, $3,881.69, less items disallowed, $1,651.46, amount allowable, $2,230.23. Amount claimed per return, $3,823.78, less amount allowable, $2,230.23, amount disallowed, $1,593.55."

THE COURT: Now that you have gotten through with your facts that you are testifying to, sit down. You are a witness now.

MR. CATALDO: Yes, sir.

THE COURT: You may cross-examine.

MR. CATALDO: I'm not through with my facts, sir.

THE COURT: I thought you just said you had. What other facts do you wish to state? Your own knowledge about them.

MR. CATALDO: This is to my own knowledge. All through this litigation there was never --

THE COURT: In this case here?

MR. CATALDO: This case. Government counsel has never taken any position with respect to this petty cash item until they discovered that I had lost my diary about, I guess, the other day, when I told this Court I lost my diary. Since then they have been taking a position of denying or disallowing the items.

THE COURT: Are you through now?

MR. CATALDO: And only since then.

THE COURT: Are you through now?

MR. CATALDO: Yes, sir.

THE COURT: Very well. You are through with your testimony and I think you are through with your comments; is that so?

MR. CATALDO: Yes, sir.

THE COURT: All right. You are through with both.

You may start with cross-examination. If it is going to last very long, we will take a recess now.

MR. REILLY: Not very long.

BY MR. REILLY:

Q Mr. Cataldo, in propounding your interrogatories at the outset of this litigation, did you ask questions about each one of the categories in the deficiency notice as to which items were disallowed?

A I don't know what you mean, sir.

THE COURT: That question is clear.

THE WITNESS: The interrogatories speak for themselves.

THE COURT: They don't speak for themselves. You answer the question.

THE WITNESS: I don't know exactly what he means, sir.

THE COURT: I suppose you can look at the interrogatories. If you want to offer those, I will take them into evidence.

MR. CATALDO: I offer them in evidence.

THE COURT: I didn't hear you offer them at all. You just read one question and one answer.

MR. CATALDO: I offer the interrogatories and the answers thereto.

MR. REILLY: The government has no objection to that.

THE COURT: Mark them in evidence.

(Plaintiffs' Exhibit 30 for identification received in evidence.)

THE COURT: Any other questions, Mr. Reilly?

MR. REILLY: Yes.

BY MR. REILLY:

Q Mr. Cataldo, did the government serve upon you during the course of this litigation a notice to produce documents?

A Have you got it?

THE COURT: Show it to him.

A It may refresh my recollection.

THE COURT: You can offer the notice to produce in view of these situations which have been referred to.

MR. REILLY: Your Honor, maybe it would be preferable if we did take a recess.

THE COURT: All right, we will have a recess.

(Recess.)

THE COURT: Any more questions, Mr. Reilly?

MR. REILLY: Yes.

I would like to mark for identification Defendant's Exhibit C.

(Defendant's Exhibit C marked for identification.)

THE COURT: Notice to produce?

MR. REILLY: Yes.

THE COURT: All right.

Do you offer that?

MR. REILLY: I offer this, written interrogatories and request for documents dated April 29, 1971.

THE COURT: Any objection, Mr. Cataldo?

MR. CATALDO: No, sir.

THE COURT: Mark it.

(Defendant's Exhibit C for identification

received in evidence.)

THE COURT: Did you get answers to this? This isn't a notice to produce.

MR. REILLY: And requests. The last two pages.

THE COURT: I see. All right.

BY MR. REILLY:

Q Mr. Cataldo, did you respond to the request for production of documents in accordance with Defendant's Exhibit C?

A Yes, sir.

Q Did you come to my office on July 8, 1971 in response to this request for documents with various documents?

A Yes, sir, I got a receipt. When I delivered the documents, I got a receipt..

THE COURT: All right. You came with certain documents.

x Q Did those documents include bank book stubs and cancelled checks?

A Yes.

Q Did I ask you at that time where your diary was?

A No. I told you where the diary was. It was with me at the time.

THE COURT: Strike out, "I told you."

Your answer is, "No."

Q Did you say the diary was with you at the time?

A Yes.

Q Did I ask you to produce the diary for me at that time?

A Yes.

Q Did you produce the diary for me?

A No.

Q Is the answer No?

A No; I told you --

THE COURT: The answer is, "No."

A (Continuing) I told you I had shown it to Mr. Levine and Mr. Lipton and Mr. Shulman, and I wasn't going to show the diary to you without a court order.

Q Did I inform you that we would deem this not in compliance with the request for documents?

A I --

THE COURT: Just answer his question.

Q Did I tell you, Mr.Cataldo, that the government would deem your failure to produce the diary to be not in compliance--

A Not only did you tell me that, you didn't do anything afterwards. I told you I wanted a court order before I would produce my diary.

Q Did I indicate to you that we would move at trial should you attempt to offer the diary entries in evidence to have such evidence excluded?

A No.

MR. REILLY: I have no further questions, your Honor.

I would like to take the stand, however, and have Mr. Land question me.

THE COURT: I want to ascertain whether or not Mr. Cataldo has any further proof about these items of petty cash. I take it you don't have. Don't think up something now. Just tell me.

MR. CATALDO: I'm trying tothink up whether I have given you the whole story.

THE COURT: I take it you have.

All right, you are through then on this.

MR. CATALDO: Well, --

THE COURT: You will have to stop sometime.

MR. CATALDO: I know, I know. I'm trying to think of whether I did or didn't. All I can think of, I don't know whether I made it very clear. I do want it to be clear that Mr. Levine was given the diary and he checked the diary against what he had.

THE COURT: All right.

Now, the government may have a witness take the stand.

I should note at this time that the proof of the plaintiffs with respect to these petty cash items is now completed.

Are you going to be examined by your associate?

MR. REILLY: Yes, your Honor.

(Witness excused.)

T. GORMAN REILLY, called as a witness on behalf of defendant, being first duly sworn, was examined and testified as follows:

EXAMINATION BY MR. LAND:

Q Mr. Reilly, are you and were you responsible for representing the United States in the defense of this action?

A Yes.

Q I show you Government's Exhibit C admitted in evidence.

Could you tell us whether that is a copy of a request for documents served upon Mr. Cataldo?

A Yes, it is. It's the file copy that we keep in the office file.

Q Is there an indication on that notice that it was duly served upon Mr. Cataldo?

A Yes. There's a sworn statement before a notary by Pauline Troya that it was served on Mr. Cataldo by mail on April 29, 1971.

Q Did Mr. Cataldo respond in person to the request for documents contained therein?

A Yes. He appeared at my office on, I believe it was, July 8, 1971.

Q Were there in the requests for documents any documents that Mr. Cataldo did not produce at that time?

A Yes, there was.

MR. CATALDO: I object to that.

THE COURT: Overruled.

Q Could you please read to the Court that portion of the request for documents to which there was no response by Mr. Cataldo at that meeting.

MR. CATALDO: I object to that.

THE COURT: Overruled.

A Mr. Cataldo was asked for and did not produce all records, books, diaries kept by plaintiff to substantiate the following expense by plaintiffs during 1963 as business deductions: Item 3, petty cash, travel and entertainment.

In fact, I asked Mr. Cataldo where the lawyer's diary was, because I wanted to ascertain and verify those charges.

MR. CATALDO: I move to strike that part of the answer out as not responsive.

THE COURT: Denied.

Q At any subsequent time did Mr. Cataldo produce the diaries requested therein.

A No, he did not.

Q At the time of the meeting with Mr. Cataldo and with respect to the diaries that he did not produce, did you make any statement with respect to the government's need for those documents?

MR. CATALDO: I object to that.

A I did.

THE COURT: Overruled.

A (Continuing) I did.

MR. CATALDO: I object to that.

THE COURT: I said overruled. If you can't hear me, I will shout.

Q What did you state to him?

A I told --

MR. CATALDO: Just a minute. I object to the question.

THE COURT: You object to everything, counsellor. I will have to overrule this. This is something which Mr. Reilly said allegedly to plaintiff here.

Q What did you state with respect to those diaries to Mr. Cataldo at that time?

MR. CATALDO: I object to the question, sir.

THE COURT: Overruled.

A I said we would insist upon the diary, and that if you did not produce it, as he said he would not produce it, that we would move at trial to exclude from evidence any entries that were going to be made based on the diary.

Q When you speak about, "based on the diary" does that relate to any particular item on his tax return?

MR. CATALDO: I object to that.

THE COURT: Overruled.

A Among other things, it relates to charges for petty cash, entertainment and travel disbursements.

Q Is that the item of approximately $3,800 which is now in contention?

A Yes, sir.

Q Contemporaneous with that discussion or at a point soon thereafter, did you make any written memorandum concerning the substance of your conversation with Mr. Cataldo?

A Yes, I did.

MR. LAND: I ask to have this marked as Defendant's Exhibit D.

(Defendants' Exhibit D marked for identification.)

Q I show you Defendant's Exhibit D marked for identification and ask you to identify that, please.

MR. CATALDO: No, sir. I object to that question.

THE COURT: I will let him identify it.

Is it a record you made?

THE WITNESS: This is a record I made.

THE COURT: All right. Just answer that. That's all.

Q Does that record reflect the substance of your conversation with Mr. Cataldo with respect to the diary which he did not produce?

MR. CATALDO: I object to the question.

THE COURT: Sustained. He has testified, counsellor. You don't need anything else.

Any other questions?

MR. LAND: No further questions, your Honor.

THE COURT: All right.

Any cross-examination, Mr. Cataldo?

MR. CATALDO: Yes, sir.

THE COURT: Go ahead.

CROSS-EXAMINATION BY MR. CATALDO:

Q Mr. Reilly, wasn't the subject of whether the diary contained privileged matters discussed at the time that I was in your office delivering books and records to you?

A Yes, it was.

Q All right.

Didn't I tell you that you would have to get a court order before I would produce th[illegible]cords?

A I have no recollection of [illegible]elling me I would have to get a court order.

Q Is the answer affirmative?

THE COURT: He has anwwered your question, counsellor. Do you want the answer read?

MR. CATALDO: Yes, sir.

THE COURT: Read the answer.

(Answer read.)

MR. CATALDO: I don't want to cross-examine the witness.

THE COURT: All right. Step down.

(Witness excused.)

THE COURT: You don't have to. It's not obligatory. Now, I must assume --

MR. CATALDO: May I take the stand, please, sir?

THE COURT: You have testified before and you stated that was all with respect to this. Is this something about this?

MR. CATALDO: Yes, sir.

THE COURT: All right. It's a pingpong game. Sit down, please.

MR. CATALDO: Yes, sir.

THE COURT: What do you want to say? Is this about conversation?

MR. CATALDO: Yes, sir.

THE COURT: What is it you want to say as to fact, and that would mean what was said by one or the other?

MR. CATALDO: First of all, I want to say that I brought every record I had. The only record I did have was my checks, check stubs and my bank statements and my diary. I brought everything with me.

THE COURT: All right. What about this conversation?

MR. CATALDO: I complied with that notice completely excepting for the diary. When he asked me for my diary, I told him this was a lawyer's diary, it contained confidential information about clients. I was foolish to let it go to Mr.Shulman, and I showed it to Mr. Levine and I showed it to Mr. Lipton and we discussed it with Mr. Lipton in every respect. All these items were confirmed.

That appears in 29 for identification. I told him the only way I would show him the diary would be if he went and got a court order to compel me to give him the diary. He never has moved in this court for such.

THE COURT: And you refused, I take it from what you say, to permit the examination of this diary or to deliver it unless there was a court order; is that so?

MR. CATALDO: Until I got a court order.

THE COURT: That is all then.

Now, I think we are through with all testimony from both sides.

MR. REILLY: Yes, your Honor.

THE COURT: That is with respect to these items stated.

I want to know from Mr. Reilly your position, First tell me why you contend that the items under 25, amounting to $2,000, should not be allowed by the Court here.

MR. REILLY: Because they have not been substantiated by any records whatsoever.

THE COURT: I will say that that is probably true. However, what was the significance of whatever was said by -- was it Mr. Levine or Mr. Lipton?

MR. REILLY: The significance of that was that on audit the IRS made a determination that they would allow a certain amount of these expenditures.

THE COURT: How did that leave it as to the government's attitude towards substantiation?

MR. REILLY: The government's attitude is that at this trial, regardless of what was said or admitted by the Service on a deficiency assessment, the taxpayer must come forward and produce the documentation.

Now, the figure of $25 apparently was pulled out of a hat. It was based on --

THE COURT: Whose hat was it?

MR. REILLY: Section 274 is the hat involved. That sets the regulations under that.

THE COURT: What does it mean as to these items under 25?

MR. REILLY: If these were only entertainment expenses and if they were substantiated by a diary entry of some sort, indicating name, occasion, business client, what-have-you, no further documentation would be required for entertainment. That is what the regulation holds. If it's over $25, much more rigorous documentation is required.

For some reason the Service shows the figure of $25 to be applied to these petty cash disbursements. There's

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no basis for that. The government at this trial, when a refund action is started, isn't going to be bound by that $25 determination.

THE COURT: All right.

That is all you want to say?

MR. REILLY: That is all, your Honor.

THE COURT: I am going to decide it now to this extent: I am going to reserve, Mr. Reilly, a decision as to the $2,000. Certainly there's been no evidence as to particular items above the $2,000. So at this time I will decide it to the extent that any items over the $2,000 have not been proved sufficient to warrant an allowance of it.

I shall ask you to submit a memorandum on the $2,000-item.

What time will you have it ready? What day? Next week?

MR. REILLY: Next week, your Honor.

THE COURT: Wednesday?

MR. REILLY: Your Honor, couldn't we submit a post-trial memorandum encompassing all the issues here?

THE COURT: I don't want a post-trial memorandum on all the issues. I am not going to go over each of these.

MR. REILLY: Is this the only issue? We will have that by next Friday.

THE COURT: All right. Serve it, file it with me, and you may have until the following Tuesday, Mr. Cataldo, to reply.

I am going to ask this much of the government. I am going to ask you to give me a little memorandum on each of the general items here, but not by item, but by type of items. Let me see if I can express myself.

On second thought,I don't think it is necessary.

I want to ask this question to Mr. Cataldo. Isn't it true that the items which you contemplated putting in some amendment of the complaint related solely to these petty cash items?

MR. CATALDO: No, sir.

THE COURT: What items do they refer to? What is the general nature of any items that you want to put in any amended complaint?

MR. CATALDO: Yes.

THE COURT: They are the items then of the petty cash; isn't that right?

MR. CATALDO: No, sir.

THE COURT: Tell me what they are.

MR. CATALDO: That was only one item.

THE COURT:, One item?

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MR. CATALDO: One of the things that I intenddd.

THE COURT: What is it?

MR. CATALDO: The other purpose I wanted to accomplish was that 25 states where the government has made admissions of deductibility, and among them you will find that the government's trial memorandum, when it made objections, when it made disallowances, went beyond the deficiency notice, and that statements explains how they went beyond the deficiency notice.

I offered that paper in evidence- -

THE COURT: What paper?

MR. CATALDO: 25. I offered it in evidence with 24. They complement each other.

THE COURT: Get them out so I can see them.

MR. CATALDO: I offered them in evidence so that I could have a record of just what the items of expenses were and what position the government has taken from the deficiency notice at various stages of this litigation showing a change of mind --

THE COURT: They still all relate, do they not, to the petty cash items; isn't that so?

MR. CATALDO: No, sir.

THE COURT: What do they relate to?

MR. CATALDO: Let me find it and I will run down the list for you.

THE COURT: I am not going to do it. You put it in writing and do as I said in the beginning. Make the motion and state what your amendment is. I am not going to spend time while you fiddle around for your papers. You ought to know by this time. The hearing on these matters is closed.

Let me recite once more what is to be done. I want the memorandum with respect to the $2,000 petty cash, that is as to whether or not the disposition by the IRS, whether it was in appellate portion or not by Mr. Lipton or in the other portion below by Mr. Levine or where is binding upon the government here. I have already disposed of the amounts above $25.

Secondly, I want a memorandum, Mr.Reilly, after you have received the proposed amendment with respect to whether or not I should grant that.

MR. REILLY: Yes, your Honor.

THE COURT: I think that is all.

I have the memorandum from each side with respect to the '63 problem, of when this alleged rule went into effect.

MR. REILLY: Your Honor, there are certain items which we don't contest but we contest the way they are treated.

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For example, contributions. We have agreed that Mr. Cataldo has established $303 in contributions. We say, however, as a matter of law that these are not business deductions, but rather itemized deductions. The proper treatment of them is as a personal itemized deduction rather than a business expense.

THE COURT: I have heard no testimony on that from the plaintiff, and so I shall have to follow whatever you contend.

MR. CATALDO: No, sir. They are all business expenses. He withdrew his objections to them.

THE COURT: Wait a minute.

MR. CATALDO: Why don't you let me defend myself?

THE COURT: Go ahead, defend yourself with relevant statements.

MR. CATALDO: It's not irrelevant. He withdrew his objections to the contributions and thereby changed the deficiency notice. I said nothing whatever. That is all it amounts to. He permitted the contributions to be deductible by merely withdrawing his objections.

Now, the deficiency notice, if your Honor pleases, and this is the way they are handling it -- the deficiency notice cuts out contributions that were cash

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contributions. When we go to church we use cash --

THE COURT: Not always. Sometimes I use a check.

MR. CATALDO: I don't, sir. The people come around to my house --

THE COURT: All right, you use cash.

MR. CATALDO: Let me restate that. These cash contributions, I don't know what they amounted to. I don't see the exhibit in front of me right now.

The cash contributions -- here it is. The cash contributions were $343 and they disallowed them just because they are cash.

The contributions that we claimed in my business were the contributions that I made for such things where Henry Benisch is the chairman of the YMCA, his local YMCA chapter.

THE COURT: That is not a church. I want to see if I can --

MR. CATALDO: I'm sorry, Judge. You said you were going to let me finish.

THE COURT: I am not going to let you finish. I will do it in order to expedite this matter, to obtain clarity. I don't get very much of it from you.

I want to understand, if you please, Mr. Reilly,--

MR. CATALDO: But you -- I'm sorry, Judge.

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THE COURT: Sorry doesn't aid me.

I want to know, Mr. Reilly, what the status is in respect to these contributions or cash payments, whatever they are. Are they cash payments set up as business expenses?

MR. REILLY: Most of them are not cash payments but rather by check.

THE COURT: Do they relate to --

MR. REILLY: The government's contention, they have no relation to business.

THE COURT: What is the status of it in this lawsuit?

MR. REILLY: The government concedes that $303 were paid, number one, and that they are allowable as an itemized deduction as opposed to a business deduction. That is all we contend.

THE COURT: Do I have to do anything about it?

MR. REILLY: You have to rule in front of the --

MR. CATALDO: I --

THE COURT: Will you please keep quiet. You can't seem to realize that you should not interrupt.

Go on, if you please. Go back a little so I can understand it.

MR. REILLY: It's a minor point. I think it is important, however.

THE COURT: I want to know what I have to decide.

MR. REILLY: You have to decide if these are valid itemized deductions and not valid business deductions. They have nothing to do with Mr. Cataldo's business.

THE COURT: Let me see if I understand it.

You disallow them and the status of the issue requires the plaintiffs here to show that they were made as contributions? Is that the gist of it?

MR. REILLY: As itemized deductions, yes.

THE COURT: How much is it?

MR. REILLY: It's $303.

THE COURT: That is the amount?

MR. REILLY: That is the amount that we concede. Mr. Cataldo apparently claimed some more.

THE COURT: You concede and then you do not concede.

Will you sit down so I can find out something.

MR. CATALDO: You are not finding out from him.

THE COURT: Maybe not. I am the one to decide that, not you.

MR. CATALDO: I'll be glad to help you.

THE COURT: I don't think you will help me at all, if I may say so, on this item.

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Does this mean, Mr. Reilly, that the plaintiff should come forward and prove the validity of these payments as a deduction of some kind?

MR. REILLY: No, he does not have to do that.

THE COURT: What does it mean?

MR. REILLY: It means that your Honor should rule as a matter of law that they are not entitled to be business deductions but are entitled to be itemized deductions. The significance of it --

THE COURT: I will so rule.

MR. CATALDO: You didn't give me an opportunity--

THE COURT: What difference does it make if they are deductions?

MR. CATALDO: I'll tell you why. You thereby eliminate an item of $342 in cash payments --

THE COURT: I don't.

MR. CATALDO: All right, sir. Thank you very much.

THE COURT: I don't think Mr. Reilly says so. Maybe I misunderstood you.

MR. REILLY: It's upon Mr. Cataldo to show any other contributions in excess of $303.

THE COURT: Up to the $303 he doesn't have to show anything.

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MR. REILLY: That is correct.

MR. CATALDO: No.,

THE COURT: Listen, don't you realize that he is conceding $303?

MR. CATALDO: No, sir.

THE COURT: He is not?

MR. CATALDO: I don't need his concession.

THE COURT: If you don't want to take it, then you come in and prove all of it, counsellor. If you feel so badly as that about it --

MR. CATALDO: No, Judge. If you will permit me, please. I claim $342 in the return as cash contributions. I claim the 303 -- I thought it was $800, he said they are 303-- of contributions I made as a lawyer, trying to enhance my business this way, contributions by checks which I mailed to various parties who asked me for contributions.

Now, he then in his deficiency letter eliminates the cash contributions because I had other contributions, and now he says that though the contributions by checks had been disallowed before, even those had been disallowed in the defiiciency judgment, he comes in in this litigation and has agreed to their allowance, and he is saying to your Honor: I allow 303 and doesn't tell you that he wants to thereby reject the cash contributions which were made.

THE COURT: I don't follow you at all.

MR. CATALDO: All right. I think I can be --

THE COURT: The record has to be clear.

MR. CATALDO: There are two sets of contributions. The cash contributions which were put on the front page of the return, they were personal contributions. They were considered personal contributions.

Then the other set of contributions appeared in my profit and loss statement from the operation of the business.

THE COURT: Let me ask you a question at this point.

What difference does it make in the amount of the tax if it is in the one or if it is in the other?

MR. CATALDO: If both are allowed --

THE COURT: You can't count the same payment for both.

MR. CATALDO: No, I'm not claiming --

THE COURT: Will you please answer my question as to what difference it makes if you are allowed as a deduction for one purpose or if you are allowed a deduction for another purpose?

MR. CATALDO: If he does not cut the contributions

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down from $660, whatever the amount is, then the only difference would be that I would be paying a self-employment tax on $303.

THE COURT: I don't know how you get to that point.

MR. CATALDO: I will explain that.

THE COURT: I wish you would.

MR. CATALDO: If I don't take the $303 contributions from my earnings, the earnings I earned, then that increases the profit. The self-employment tax is a separate tax and is based upon the profit that I have earned in the business.

THE COURT: How much would that be?

MR. CATALDO: I don't know. It's about four per cent, five per cent on $303. That is not the point, Judge.

I operate my business in this fashion and I am entitled to state my return in the way I operate my business. This is a truthful way of operating a business.

THE COURT: Yes, but this is a lot of fiddling around over nothing, in my humble opinion.

MR. CATALDO: He's doing it.

THE COURT: He isn't doing anything that may not be warranted.

MR. CATALDO: He's trying to eliminate $342 of

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cash contributions.

MR. REILLY: We do not concede that.

THE COURT: Sit down. Maybe you can throw some further light on this.

MR. REILLY: Your Honor, we contest any cash contributions. The only thing we allowed as an itemized contribution is $303 in proven checks. That is all.

THE COURT: Let me ask you this: Do you mean to say that if the taxpayer wants credit he must come in with proof no matter which purpose it is; is that so?

MR. REILLY: That's correct. We have accepted proof for $303.

THE COURT: You have accepted $303, and how much is left then?

MR. REILLY: Apparently $347, something in excess of that.

THE COURT: I am not going to have any further proof today. This case will be adjourned solely for that purpose until next Wednesday morning at 10 o'clock. You will have to come in then with any proof you want to make with respect to these items.

Do you understand me?

MR. CATALDO: I understand you, your Honor. I must tell you that Judge Levine is going to hold me for

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trial on Monday. I don't know what to tell you, Judge.

THE COURT: Judge who?

MR. CATALDO: June Levine in Nassau. Since you have no jury here --

THE COURT: I will have a jury here.

Let me ask you: Are you going to go to trial, actual trial, Monday?

MR. CATALDO: I haven't had a report of what happened today on the calendar, sir. We were at the top of the calendar, to pick a jury today. What will happen on Monday, I don't know.

THE COURT: All right. I will make it Monday at 9:30..

MR. REILLY: Your Honor, I suggest that there are two other issues involved. Number one, we have challenged Mr. Cataldo's right to $210 in state and city sales taxes. We only admit $150 of it. Therefore, he has to prove $60 in addition.

Secondly--

THE COURT: All right. He shouldn't have to do this. He's telling you what you have got to do. He is helping you. If you didn't put in theproof, he could very well say at the end of this case that you haven't and --

MR. CATALDO: Judge, --

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THE COURT: Don't argue about that. That's fundamental.

MR. CATALDO: I must say in my defense, Judge, I have come prepared to attack the deficiency judgment.

THE COURT: Look, I am not going to listen to any more argument.

MR. CATALDO: I --

THE COURT: Will yo[illegible] keep quiet. He's telling you what you should prove. He doesn't have to do that. So you will be here on Monday at nine-thirty.

Any matters that are left unproved at that time, of course, will have to be held against you. That is all I am going to say.

Nine-thirty Monday morning, room 102.

(Pause.)

THE COURT: What is it?

MR. CATALDO: My adversary just approached me now and he's opened the issue on a $1800 item of interest. He's allowed it. He's allowed it three or four times. The deficiency notice allowed it.

Now he comes whispering to me that he's going to put me to that issue on Monday. I don't think it's fair.

THE COURT: It's a matter of law what is

proved or disproved.

MR. CATALDO: He;--

THE COURT: Will you please sit down. As long as you are on your feet you open your mouth. I am sorry to have to talk to you this way. You just simply don't conduct yourself the way a lawyer should. It's primarily because you are your own lawyer and you lose your temper. It may be for other reasons. I don't want to hear anything.

Mr. Reilly, what is this about the interest?

MR. REILLY: This is the same argument that we made with respect to contributions. We do not contest that the amount was paid. We assert, however, that they are itemized deductions rather than business deductions.

THE COURT: Is there a claim for payment of interest?

MR. REILLY: Yes.

THE COURT: Is there any proof yet as to the person to whom it was paid and why?

MR. REILLY: That has been listed in Mr. Cataldo's list of checks which we have not objected to. This is all part of the appendix, your Honor.

THE COURT: What is the status of it as to the proof? Is there enough proof here to show to whom it was paid and to permit me to act on it?

MR. REILLY: Yes, your Honor. Inasmuch as the government has admitted it was paid --

THE COURT: Is there any contest about the purpose of it?

MR. REILLY: Yes, That's the point. The interest expense we contend is a personal expenditure, not a business expenditure.

THE COURT: I see.

What is the interest now?

MR. REILLY: It was on various loans from Marine Midland Bank and other banks.

THE COURT: Is interest of that kind deductible?

MR. REILLY: It's deductible as an itemized expense. If we pay interest on a personal loan --

THE COURT: I'm sorry, but I have to press you. Is there enough proof now as to the purpose of this?

MR. REILLY: No proof offered as to the purpose.

THE COURT: Do you say that if a loan is made and interest is paid on it, there's not a deduction unless some purpose is --

MR. REILLY: It's prima facie evidence of a deduction, an itemized personal deduction, but not a business deduction. Mr. Cataldo has the burden of showing it was a business expense.

THE COURT: In other words, you accept it as a personal deduction?

MR. REILLY: Correct, your Honor.

THE COURT: But not a business deduction?

MR. REILLY: That's correct.

THE COURT: That's the status of it. You have been told that.

What do you want me to do now at 4:15 on a Friday afternoon?

MR. CATALDO: After your Honor left the bench he came over and whispered to me this is what he was going to do. I don't think it was fair.

THE COURT: You don't understand what is fair and what is unfair. I see nothing unfair about it. He is telling you something.

All right.

(Adjourned to May 14, 1973, at 9:30 a.m.)

UNITED STATES OF AMERICA
v.
ANTHONY B. CATALDO and ADA W. CATALDO

New York, May 14, 1973;
9:30 o'clock a.m.

Trial resumed.

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THE COURT: Good morning.

Now, I believe there are three matters which come up for attention. The first one is, as I recollect, in reference to your cash payments which the government disallows as business deductions but which it will allow as itemized deductions.

Is that one, Mr. Reilly?

MR. REILLY: These are interest expenses and contributions,

THE COURT: There might be some proof on that, I take it, correct?

MR. REILLY: There may be some proof as to further expenses and there may be some proof as to whether they were for business purposes by Mr. Cataldo.

THE COURT: Suppose we leave that.

I'm a little bit uncertain as to what you mean by this. The second one I have is interest payments which the government disallows as business deductions but which might be allowed as itemized deductions.

Is that connected with this first one?

MR. REILLY: Yes, your Honor. I misunderstood what you said by cash. The first one relates to contributions and the second issue relates to interest.

THE COURT: The first one relates to possible claim as a contribution?

MR. REILLY: Yes, your Honor.

THE COURT: Charitable contribution, perhaps?

MR. REILLY: Yes, your Honor.

THE COURT: All right.

Now, this is really maybe the same, items claimed by Cataldo as business deductions which are possibly charitable deductions.

Proceed with your proof of facts then.

MR. REILLY: There is one remaining issue, and that is sales tax. There is a claim of $210 in local and state sales taxes.

THE COURT: There is no definite proof on that in the papers?

MR. REILLY: No, your Honor.

MR. CATALDO: I have some other items, too.

THE COURT: Every time I turn around you have something else.

What are the other items, counsellor?

MR. CATALDO: Thank you.

THE COURT: I will listen reluctantly. There must be an end to this thing.

Off the record.

(Discussion off the record.)

MR. CATALDO: Here's my list.

THE COURT: What is it? This is the last one, you say?

MR. CATALDO: No. This is my list of things.

THE COURT: What are the list of things that we haven't dealt with, please?

MR. CATALDO: Yes, sir. I was not permitted to show the arbitrariness of the deficiency notice. There's various factual proof of that fact. I think I am entitled to show --

THE COURT: I will leave that for last, if anything. I don't know whether I will allow anything.

MR. CATALDO: Also I would like to show that the admissions made by Mr. Levine and the various admissions made by counsel for the defendant during this litigation -- I would like to call your Honor's attention to the fact that in a tax-refund suit the gwt

government is not in a preferred position. It is no different than any other ordinary litigant.

THE COURT: All right.

What else do you have there on the list?

MR. CATAIDO: Yes, sir. The government has made disallowances of various items which were not made in the deficiency judgment, notice, and the burden of proof, which is equivalent to --

THE COURT: Have you a list of those items?

MR. CATAIDO: Yes, sir.

THE COURT: What is it? Is it long?

MR. CATAIDO: Yes, sir.

THE COURT: How long is it? How many? Have you got a written list?

MR. CATAIDO: Yes, sir. As a matter of fact--

THE COURT: Have you the list in writing?

MR. CATAIDO: Yes, sir.

THE COURT: Get it out, will you, please.

MR. CATAIDO: Exhibit 25 for identification. You have the original. The orginal was filed with the court two days prior to trial. Instead of examining that list I was forced onto a trial of --

THE COURT: Why didn't you make an objection at the time, at the beginning of the trial, counsellor?

MR. CATALDO: I was told I couldn't say anything. Otherwise, I would be held for contempt.

THE COURT: No, you weren't, not any such thing as that.

MR. CATALDO: Instead here are the two exhibits. They complement each other. These are my copies. The Court has the originals.

THE COURT: I will ask Mr. Madden to look it up in the folder.

Anything else now?

MR. CATALDO: Yes, sir.

THE COURT: What is it? Go right on. It's a long list.

MR. CATALDO: I would like to call your attention to the law in respect of this idea of the deficiency notice not being followed, and that is that the burden of proving the disallowances really is on the government. All the taxpayer has to do is to offer what might be termed in common law the prima facie case. It's up to the government --

THE COURT: No, the prima facie case is the other way around, I think.

MR. CATALDO: I say --

THE COURT: You must meet the alleged deficiencies.

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MR. CATAIDO: The deficiency, yes, but not what counsel has alleged outside of the deficiency and in addition to the deficiency. In those matters our Court of Appeals here said --

THE COURT: I am not going into that now. I am going to take facts. I will let you file some memorandum about these matters which are largely law.

Do you understand me?

MR. CATAIDO: Yes.

THE COURT: All right.

Do you have any more on your list?

MR. CATALDO: Yes, sir.

THE COURT: Get them out of your system, by all means.

MR. CATAIDO: Thank you very much. I'm sorry to delay this.

THE COURT: I'm sorrier than you are, as I said before.

MR. CATAIDO: Also the offer of Exhibit 24, which is also filed with the Court --

THE COURT: I have Exhibit 24 for identification. Go right on, counsellor.

MR. CATAIDO: Thank you. I wanted to finish my statement about that 24.

THE COURT: I am not stopping you. What is it? What is it, please?

MR. CATAIDO: Exhibit 24 for identification. That is a list of expenses claimed as deductible, and your Honor will see from that that I hope to prove that they are normal business expenses in a normal ordinary course of business.

THE COURT: How do they get into this action? Were they referred to in the deficiency?

MR. CATALDO: No, sir. The deficiency is ambiguous. The deficiency does not state the items which they disallowed. The deficiency lumped a lot of figures together and then through a process of bookkeeping or making mental gyrations of figures they disallowed huge amounts like $1,084 in one instance and $2,290 in another.

53 THE COURT: I am not going to listen to argument about it now.

Is there any other claim here that you think should be adjudicated? If so, what is it, please?

MR. CATALDO: Yes, sir. You have overlooked--

THE COURT: What have I overlooked?

MR. CATAIDO: -- a very important item, that there doesn't have to be any supporting proof for items under $25.

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THE COURT: I understand Mr. Reilly disputes that.

MR. CATALDO: Mr. Reilly has not --

THE COURT: I am not going to listen about that. That is your claim. I am going to take a recess, an adjournment, and let you submit in writing what you claim should be otherwise decided here.

MR. CATALDO: Mr. Reilly's memorandum of law is incorrect.

THE COURT: Listen, I am not going to listen. I just told you that.

Do you know if you order a record here you have to pay for all of these surplus words that you are uttering? You better think about that. I don't know how much it costs per word, but it's a couple of dollars a page, perhaps, or thereabouts.

MR. CATALDO: I want to call your Honor's attention, because you said you are going to reserve decision --

THE COURT: I don't want to hear argument about it. Can't you understand plain English?

MR. CATALDO: This is a factual statement I am going to make now.

My diary contains --

THE COURT: Get away from your diary. You have

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exhausted that subject.

MR. CATALDO: No, I have not.

THE COURT: At least as far as I am concerned.

MR. CATALDO: I haven't mentioned the fact that my diary contains entries having to do with the business of my clients.

THE COURT: Where is it? You have gone over that. I am not going to listen anymore to any of these issues. These and other issues which you say should be further treated by the Court are to be covered in your memorandum. I will tell you that after we close today.

Do you understand me?

MR. CATALDO: Yes, sir.

THE COURT: Then adhere to it.

I am not going to listen to anything else.

MR. CATALDO: You don't want me to state these issues?

THE COURT: No, I don't. I am going to ask you to do it in writing so we can have some time and so both sides will save a whole lot of transcript charges.

MR. CATALDO: That will be fine, Judge.

THE COURT: Then will you please sit down and act as a witness. We will take up these matters which I mentioned.

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Is there anything about cash payments which the government disallowed as business deductions and which might be some other kind of deduction? Have you got anything ready with that? Yes or no. Charitable matters. Are there any items which were disallowed as cash or business deductions which were not allowed as such which you want to claim are charitable deductions? If so, what are they?

MR. CATALDO: Yes, sir.

THE COURT: What are they now? You are going to testify as a witness. Don't get into arguments. You see, you add to the burden of the transcript by all of your talk.

MR. CATALDO: I claimed cash charitable --

THE COURT: Just tell me what they are without any preliminaries, will you, please, to shorten this thing.

ANTHONY E. CATALDO resumed.

MR. CATALDO: Yes, sir. The first item is a pledge for the year for the Church in the Gardens of $102.

THE COURT: Was it paid?

MR. CATALDO: Yes, sir. I paid it during the year.

THE COURT: What is the proof, Church in the Gardens?

MR. CATALDO: It's all cash disbursements, sir. That is $102.

THE COURT: What is the address of this place, Church in the Gardens?

MR. CATALDO: Across the street --

THE COURT: What address? What street?

MR. CATALDO: Ascan Avenue, Forest Hills.

THE COURT: What proof have you that the cash payments were made?

MR. CATALDO: I am testifying under oath.

THE COURT: When were they made? How much?

MR. CATALDO: Through the year and $102.

THE COURT: When? Was it any regular interval or what?

MR. CATALDO: In the envelope we put $2 a week. My wife only goes to Church in the Gardens. She's Protestant. That church is a Congregational Church. She finds it more convenient to go across the street from us.

THE COURT: What is this church? You say this is Congregational?

MR. CATALDO: Yes, sir.

THE COURT: Who pays the money, you or the wife?

MR. CATALDO: I'm the only earner.

THE COURT: Do you go to that church?

MR. CATALDO: No, sir.

THE COURT: Who carries the money to church?

MR. CATALDO: My wife does.

THE COURT: Why isn't she here then? All right. Is that all the evidence you have?

MR. CATALDO: She's out in Mineola today.

THE COURT: She might just as well be in the North Pole as far as you are concerned.

Is that all your proof?

MR. CATALDO: No, sir.

THE COURT: What is the rest of your proof?

MR. CATALDO: On the $102? I know that if she misses going to the Congregational Church, she goes to St. Luke's, which is her regular church, and then we make it up, I make it up during the year in some way whenever I attend a function --

THE COURT: Are you through now on your facts?

MR. CATALDO: Yes, sir, on that one item.

THE COURT: Of course.

Cross-examination on that item.

BY MR. REILLY:

Q Mr. Cataldo, do you have a copy of the pledge that you made?

A I don't think we kept one. We signed it and sent it in.

Q When Mrs. Cataldo made contributions in the envelope, did she keep a receipt of the envelope expenditure?

A That is not the custom in that church. It was not done.

MR. REILLY: No further questions, your Honor. This must be disallowed.

THE COURT: Yes, it's disallowed. I have noted it.

What is the next item, if any, in this field?

MR. CATALDO: $50 that I paid attending various functions at the Church in the Gardens, like breakfast, when I went to breakfast and then --

THE COURT: When you eat, is that a charitable contribution?

MR. CATALDO: No.

THE COURT: I don't follow that one either.

MR. CATALDO: When I eat at the church it's an extra expense. They ask us to support the church and so we do.

THE COURT: All right.

How many times were you there and so forth? How